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DUE PROCESS IN SECURITY CLEARANCE DETERMINATIONS

JOINT HEARING

BEFORE THE

SUBCOMMITTEE ON CIVIL AND CONSTITUTIONAL RIGHTS

OF THE

COMMITTEE ON THE JUDICIARY

AND THE

SUBCOMMITTEE ON THE CIVIL SERVICE

OF THE

COMMITTEE ON POST OFFICE AND CIVIL SERVICE

HOUSE OF REPRESENTATIVES

ONE HUNDRED THIRD CONGRESS

FIRST SESSION

MAY 5, 1993

Committee on the Judiciary

Serial No. 56

Committee on Post Office and Civil Service

Serial No. 103-9



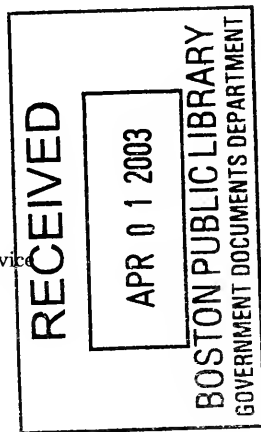
Printed for the use of the Committee on the Judiciary and the
Committee on Post Office and Civil Service

U.S. GOVERNMENT PRINTING OFFICE

79-687 CC

WASHINGTON : 1994

For sale by the U.S. Government Printing Office
Superintendent of Documents, Congressional Sales Office, Washington, DC 20402
ISBN 0-16-046194-4



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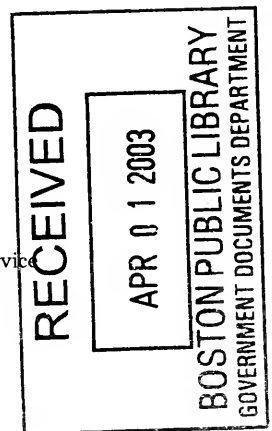
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DUE PROCESS IN SECURITY CLEARANCE DETERMINATIONS

WEDNESDAY, MAY 5, 1993

HOUSE OF REPRESENTATIVES, SUBCOMMITTEE ON CIVIL AND CONSTITUTIONAL RIGHTS, COMMITTEE ON THE JUDICIARY, AND SUBCOMMITTEE ON THE CIVIL SERVICE, COMMITTEE ON POST OFFICE AND CIVIL SERVICE,
Washington, DC.

The subcommittees met, pursuant to notice, at 10 a.m., in room 2226, Rayburn House Office Building, Hon. Don Edwards (chairman of the Subcommittee on Civil and Constitutional Rights) presiding.

Present from the Subcommittee on Civil and Constitutional Rights: Representatives Don Edwards, and Howard Coble.

Also present from the Subcommittee on Civil and Constitutional Rights: James X. Dempsey, assistant counsel; Jancelyn Pegues, clerk; and Kathryn Hazeem, minority counsel.

Present from the Subcommittee on the Civil Service: Representative Frank McCloskey (chairman).

Also present from the Subcommittee on the Civil Service: Deborah Kendall, staff director; Wendy Lowengrub, deputy staff director; and Nathan Zietlow, counsel.

OPENING STATEMENT OF CHAIRMAN EDWARDS

Mr. EDWARDS. The subcommittees will come to order. Today the subcommittees will consider the standards and procedures used by the Government in granting, denying, and revoking security clearances. This hearing is being held jointly with the distinguished Subcommittee on Civil Service. Our two committees held 5 days of joint hearings on this subject in the 101st Congress. It was a very fruitful collaboration. I am happy to see the subcommittees are working together again.

We have three goals in this hearing. Number one, receive an update on the GAO's work in this area; two, find out what changes have been made in the security clearance system since our last hearing; and what changes are pending; and three, lay the groundwork for pursuing the issue in the new administration.

Security clearances are held by approximately 3 million employees of Government agencies and contractors. The existing security clearance system is a product of the cold war. It has evolved over time to the point that it is fraught with complexity and inconsistencies.

For example, contractor employees facing denial or revocation of security clearances are entitled to a hearing on disputed issues

while Government employees are not provided a hearing, except in the Department of Energy, which gives hearings both to the contractor personnel and Government employees. In addition to the basic classifications of confidential, secret and top secret, the Government has created another category of information known as sensitive compartmented information or SCI.

The criteria for access to top secret and SCI are nearly identical and the same background investigation is used for both; but the two systems are usually administered separately, except in the Army which provides the same due process for top secret and SCI. Except in the Army, a person denied an SCI clearance is entitled only to the most minimal procedural rights. For example, an individual will be notified of the revocation or denial of an SCI clearance only after the decision has been made. Moreover, a person may never be told about the reasons for the denial of the clearance. DOD will provide reasons if requested while the CIA will not. In no event can the person get a hearing.

As if this were not complicated enough, the Government has created another category of information: special access programs for which there is no due process, not even after the fact, even after notice that the clearance has been denied.

The question before us today is not why we need a system to protect classified information; I think that that is clear. The question is why we need to have such a complicated system, so many inconsistent and sometimes Kafkaesque procedures.

Due process is not a luxury nor does it conflict with security. Due process is an indispensable element of security because it ensures reliable decisions.

I commend the DOD for making several improvements in response to GAO's recommendations. So far, however, these changes have been at the margin. I hope the new administration will address basic elements of the system to streamline and simplify it. I think that the administration will find that it can provide a fuller assurance of due process without sacrificing security.

Now we will proceed to our witnesses. Panel one, we are pleased to have Donna M. Heivilin, Director, Defense Management Issues of the U.S. General Accounting Office.

Welcome. Will you introduce your colleagues? You may proceed. We have problems this morning, as you can see, with a backed up schedule. So if the witnesses can limit their remarks to 5 minutes, we will make all of the statements without objection a part of the record.

I assure you they will receive careful attention. Welcome.

[The opening statement of Mr. Hyde follows:]

OPENING STATEMENT OF HON. HENRY J. HYDE, A REPRESENTATIVE IN CONGRESS
FROM THE STATE OF ILLINOIS

Although the cold war has officially ended, espionage continues to pose a very real threat to our national security. International drug trafficking, the proliferation of nuclear weapons, terrorism and increased regional and ethnic conflicts require us to remain on guard. Just last week, an American employee of the United States Embassy in Athens was arrested on charges of selling highly classified information to contacts suspected of being foreign military officers. This latest incident confirms that we must continue to insure that the individuals to whom we entrust our national secrets are reliable and trustworthy and will not compromise the information they have been given.

We are all aware, however, that there are no hard and fast rules for determining whether or not an individual may be vulnerable to compromise by outside interests. Whether examining procedures currently in place or formulating new procedures, we must balance the interests of protecting national security with the need to afford individuals with basic due process rights.

Our hearing today will focus on the processes within the various agencies and examine whether additional procedures and protections are needed. I want to thank each of the witnesses for coming and look forward to hearing their testimony.

Mr. EDWARDS. Please proceed, Ms. Heivilin.

STATEMENT OF DONNA M. HEIVILIN, DIRECTOR, DEFENSE MANAGEMENT AND NASA ISSUES, NATIONAL SECURITY AND INTERNATIONAL AFFAIRS DIVISION, U.S. GENERAL ACCOUNTING OFFICE, ACCOMPANIED BY VICTOR ZANGLA, ASSISTANT DIRECTOR, DEFENSE MANAGEMENT ISSUES, AND IRVING T. BOKER, EVALUATOR IN CHARGE

Ms. HEIVILIN. Thank you, Mr. Chairman. I have with me on my left Victor Zangla, Assistant Director of Defense Management Issues and Irving Boker, evaluator in charge of the studies we are going to be talking about today.

I appreciate the opportunity to discuss our reviews in this area. They were two. We presented a report to you last May on the security clearance denials and revocations of Defense, Energy, and State and a report that we have just put out today on the denials and revocations of access to special programs.

I have put a couple of charts up that we can be looking at as we talk so we get an idea of the population that is involved in these various types of classifications. They are over on the right here.

Mr. EDWARDS. Incidentally, we welcome Chairman McCloskey. Do you have an opening statement?

Mr. MCCLOSKEY. In the interests of brevity, in all candor, I am going to be coming in and out with a markup going on in Foreign Affairs. I ask for my statement to be accepted for the record.

[The opening statement of Mr. McCloskey follows:]

OPENING STATEMENT OF CHAIRMAN FRANK MCCLOSKEY
JOINT HEARING OF SUBCOMMITTEE ON CIVIL SERVICE
AND SUBCOMMITTEE ON CIVIL AND CONSTITUTIONAL RIGHTS

MAY 5, 1993

CHAIRMAN EDWARDS, I WANT TO THANK YOU FOR PARTICIPATING IN THIS JOINT HEARING TO EXAMINE AN ISSUE OF GREAT IMPORTANCE TO FEDERAL EMPLOYEES - THE RIGHTS EMPLOYEES HAVE WHEN THEY ARE DENIED ACCESS TO CLASSIFIED INFORMATION OR HAVE THAT ACCESS SUSPENDED OR REVOKED. CONGRESS HAS TRIED FOR YEARS TO ADDRESS EMPLOYEE'S DUE PROCESS RIGHTS FOR ACCESS TO CLASSIFIED INFORMATION, AND TODAY'S HEARING GIVES US AN OPPORTUNITY TO EXAMINE THE NEED FOR REFORM IN THIS AREA.

ORIGINALLY, THE GOVERNMENT'S SYSTEM OF CLASSIFYING INFORMATION WAS RELATIVELY SIMPLE, WITH THREE LEVELS OF CLASSIFICATION - CONFIDENTIAL, SECRET, AND TOP SECRET. IN THE AFTERMATH OF WORLD WAR II, AND DURING THE COLD WAR, PROTECTING OUR NATION'S SECRETS WAS OF THE UTMOST IMPORTANCE, AND CONTINUES TO BE SO TODAY. HOWEVER, OVER THE YEARS THE CLASSIFICATION SYSTEM HAS GROWN INCREASINGLY COMPLEX, AND ONE LEVEL OF SECRECY HAS BEEN LAYERED ON TOP OF ANOTHER.

IN THE NAME OF NATIONAL SECURITY, DENIAL AND REVOCATION OF SECURITY CLEARANCES AND ACCESS TO INFORMATION IS SUBJECT TO MANIPULATION. MY STAFF TOLD ME ABOUT A CASE IN WHICH A FEDERAL EMPLOYEE WAS ASKED TO TAKE THREE SEPARATE PSYCHIATRIC EXAMS WITH AGENCY APPOINTED DOCTORS AFTER BLOWING THE WHISTLE, AND PASSED THEM EASILY. HOWEVER, WHEN SHE REFUSED A FOURTH EXAM SHE LOST HER SECURITY CLEARANCE, AND HER ABILITY TO PERFORM HER JOB.

WHEN A CLEARANCE IS DENIED, SUSPENDED INDEFINITELY, OR

REVOKED, AN EMPLOYEE MIGHT BE TEMPORARILY OR PERMANENTLY OUT OF A JOB SINCE ACCESS TO CLASSIFIED INFORMATION IS ESSENTIAL TO SOME POSITIONS. BECAUSE OF THESE DIRE CONSEQUENCES, IT IS VITAL THAT THERE BE AN ADMINISTRATIVE PROCESS IN PLACE IN WHICH EMPLOYEES BE NOTIFIED OF THE REASONS FOR THE ACTION, HAVE A CHANCE TO REBUT ALLEGATIONS, AND HAVE THE RIGHT TO APPEAL A FINAL DECISION TO AN INDEPENDENT AUTHORITY.

THE RIGHTS OF CONTRACTOR EMPLOYEES TO RECEIVE NOTIFICATION, A CHANCE TO REBUT ALLEGATIONS, A CHANCE FOR A HEARING, AND THE RIGHT TO APPEAL WERE SPELLED OUT IN EXECUTIVE ORDER 10865, ISSUED BY PRESIDENT EISENHOWER, AND UNBELIEVABLY, THERE IS NO SIMILAR AUTHORITY GOVERNING THE RIGHTS OF FEDERAL EMPLOYEES. MOREOVER, THE EISENHOWER EXECUTIVE ORDER DID NOT CONTEMPLATE THE SPECIAL ACCESS PROGRAMS (SAPS) AND SENSITIVE COMPARTMENTED INFORMATION (SCI) THAT HAVE ADDED LAYERS OF SECURITY UPON THE ORIGINAL THREE LEVELS.

INSTEAD, THE RIGHTS OF FEDERAL EMPLOYEES HAS BEEN LEFT TO THE DISCRETION OF AGENCY AND DEPARTMENT HEADS, AND HAS RESULTED IN FEDERAL EMPLOYEES RECEIVING FEWER RIGHTS THAN CONTRACTOR EMPLOYEES. MOREOVER, TREATMENT OF FEDERAL EMPLOYEES IS INCONSISTENT AMONG AGENCIES AND DEPARTMENTS, AND EVEN IN DIFFERENT COMPONENTS OF THE SAME DEPARTMENT. IT IS TIME TO ADOPT A SINGLE, GOVERNMENT-WIDE STANDARD FOR FEDERAL EMPLOYEES WHICH WOULD PROVIDE THE SAME DUE PROCESS RIGHTS ALREADY AFFORDED TO CONTRACTOR EMPLOYEES WHEN A SECURITY CLEARANCE IS DENIED, SUSPENDED, OR REVOKED. THERE IS A FURTHER NEED FOR MORE

CENTRALIZATION OF ADJUDICATING AUTHORITIES WHICH WOULD CONTRIBUTE TO DEVELOPING MORE CONSISTENT NATIONAL SECURITY CRITERIA.

UNIFORM SECURITY CRITERIA AND CONSISTENT ADMINISTRATION OF DUE PROCESS IS PARTICULARLY NECESSARY WITH RESPECT TO SAPS AND SCI PROGRAMS, WHERE THERE IS NO STATUTORY OR EXECUTIVE ORDER AUTHORITY WITH RESPECT TO RIGHTS OF BOTH FEDERAL AND CONTRACTOR EMPLOYEES. SPECIFICALLY, AS GAO HAS IDENTIFIED, EMPLOYEES OFTEN RECEIVE NO DE FACTO RIGHTS WHEN ACCESS IS DENIED OR REVOKED. EMPLOYEES CAN AND DO LOSE ACCESS WITHOUT EVEN BEING TOLD THEY'VE LOST IT, LET ALONE THE REASONS FOR THE ACTION, OR THE RIGHT TO APPEAL THE DECISION TO AN INDEPENDENT AUTHORITY, ALTHOUGH THIS MAY BE BECAUSE OF THE SENSITIVITY OF INFORMATION IN SAPS AND SCI DESIGNATED PROGRAMS. SURELY WE CAN DEVELOP A MORE EQUITABLE PROCESS THAT MAINTAINS THE SANCTITY OF CLASSIFIED INFORMATION.

ALLOWING EMPLOYEES THE RIGHT TO WRITTEN NOTIFICATION WITH THE REASONS FOR THE ACTION, THE OPPORTUNITY TO RESPOND TO ALLEGATIONS, AND THE RIGHT TO APPEAL TO AN INDEPENDENT ADJUDICATING AUTHORITY, IS THE BEST WAY OUR GOVERNMENT HAS TO INSURE THAT DECISIONS ARE MADE ON THE BASIS OF NATIONAL SECURITY AND NOT FOR A NON-SECURITY RELATED REASON. DURING HEARINGS HELD EARLIER THIS YEAR BY MY SUBCOMMITTEE, I HEARD TESTIMONY ABOUT THE INCREASING PRACTICE OF DENYING OR REVOKING SECURITY CLEARANCES IN RETALIATION AGAINST EMPLOYEES WHO BLOW THE WHISTLE. SINCE THE MERIT SYSTEM PROTECTION BOARD LACKS THE AUTHORITY TO REVIEW SECURITY CLEARANCE DECISIONS, FEDERAL EMPLOYEES HAVE NO STATUTORY PROTECTION AGAINST THIS TYPE OF RETALIATION.

FINALLY, AS I MENTIONED BEFORE, THE BASIC SECURITY CLASSIFICATION SYSTEM AND THE RIGHTS AFFORDED TO EMPLOYEES WERE DEVELOPED NEARLY FORTY YEARS AGO, WHEN THE NATIONAL SECURITY THREATS POSED TO OUR COUNTRY WERE DRAMATICALLY DIFFERENT. WITH A NEW ADMINISTRATION CONDUCTING A REVIEW OF THE FEDERAL GOVERNMENT, WE OUGHT TO CONDUCT A MORE FUNDAMENTAL EXAMINATION OF OUR NATIONAL SECURITY SYSTEM IN WHICH WE ASK WHETHER THE ASSUMPTIONS AT WORK WHEN THE SYSTEM WAS DEVELOPED ARE STILL OPERATIVE, AND IN WHICH EFFICIENCY IN GOVERNMENT AND FAIRNESS TO FEDERAL AND CONTRACTOR EMPLOYEES ARE ADDRESSED.

CHAIRMAN EDWARDS, AGAIN I THANK YOU FOR THESE JOINT HEARINGS, I LOOK FORWARD TO WORKING WITH YOUR SUBCOMMITTEE ON THESE ISSUES, AND TO THE TESTIMONY OF OUR WITNESSES THIS MORNING.

Mr. EDWARDS. You may proceed.

Ms. HEIVILIN. A clearance, a security clearance in any of these areas can be denied or revoked when unfavorable information on the individual surfaces which is not consistent with national security issues.

Generally, the individual's clearance or access is suspended pending the resolution of the unfavorable information. Generally, it is agreed there are certain treatments that the individual should be given in order that they have fair treatment in the situation.

We believe they should be notified of the action; they should be given the reasons that the action is being taken; and they should have a chance to appeal the proposed actions. In other words, they should be able to tell their side of the story. This is commonly referred to as administrative due process. That is the subject we are going to be talking about here.

First, I would like to talk about the requirements in the area. On another chart we have here we listed the various regulations and directives that apply in this area.

There is no legislation or Executive order that spells out due process requirements for Government employees. However, there is a 1960 Executive order that applies to contractor employees and their access to classified information, but it does not mention access to special access programs and sensitive compartmented information.

For their security clearance, it requires for contract employees that their administrative due process include evidentiary hearings. This has been set up by the Department of Defense and by the Department of Energy. The Department of Energy applies the same procedures for their Government employees, so their Government employees receive evidentiary hearings.

DOD doesn't provide evidentiary hearings to its military or its civilian employees. Under the DOD regulation, 5200.2-R we have listed there, they get a written notice, a chance to respond, and a chance to appeal to a higher authority. The Army seems to apply these same procedures across the board for the clearances, for the SCI, and for the SAP.

When we examined the practices, we found that the practices ranged in the area; different situations, different types of employees, and different types of clearances get different practices when it comes to administrative due process. For example, for the special access programs, the Navy and the Air Force do not provide due process in the cases we looked at for either its employees or for contractors. For the sensitive compartmented information, when access was denied or revoked, in the cases we looked at again, administrative due process was provided.

We looked at suspensions, which was an area of concern to us, and we found that Defense and State suspended clearances for long periods of time without telling the employees why their clearance was being suspended.

The Energy Department had much shorter suspension times. At Energy, 84 percent of their suspensions were cleared up in less than 6 months; whereas with the Air Force, after 6 months, you still had 88 percent of the suspensions still pending. With the State Department, 59 percent were still suspended after 6 months. For

the Army and the Navy, we did not have enough data to be able to come up with a percentage.

The Defense Department is supposed to send cases to central adjudication for disposition when clearances are suspended. However, in the 1990 data we looked at, neither the Air Force, the Army, nor the Navy, in all of those, 70 percent of the cases we looked at had not been sent forward for adjudication, there was no final action; and the people were separated or discharged or incarcerated and they still had not reported that their clearances had been revoked. They hadn't resolved the suspensions.

The Air Force, only 9 percent were revoked in 1990 and 91 percent were left in suspension.

When we looked at the appeals procedures, we found in the Air Force, the Navy, and the State Department, that the appeals procedures appeared to lack independence because the individuals hearing the appeals either were involved in the original unfavorable action or were in the chain of command of the person who is hearing the appeal.

We have recommended that the procedures be established so that it has the appearance of independence, that it be someone who is either not involved in the original suspension or someone who is not in the chain of command of the person involved in the original suspension.

We are also particularly concerned, in the area of the special access programs, about the administrative due process for contract employees. Under the new national industrial security program, we believe that both the contract and Government employees should have access to administrative due process. Under that new program, we are concerned that it will not be received.

We are pleased to note, as you commented, that DOD and Energy have, indeed, taken action on recommendations from our May 1992 report; but I would like to underscore a position today. We believe everyone should be given an opportunity for administrative due process on his or her security clearance if it is denied or revoked; and I think when we looked at what has happened, what has changed since 1989 and 1990 when you held hearings on this subject, we are disappointed because we didn't see much change. We still see different rules for contractors and Government employees. We see different procedures for special access programs, for the sensitive compartmented information programs, and for the clearances.

Under the new industrial security program, as I mentioned, we are concerned about the due process that people will get under that program; and we do believe that that program should be looked at carefully, because we believe that it will set up a stage for a Governmentwide security program, so it is a very important program to look at.

Thank you very much.

I will submit my longer statement for the record.

[The prepared statement of Ms. Heivilin and the GAO reports follow:]

PREPARED STATEMENT OF DONNA M. HEIVILIN, DIRECTOR, DEFENSE
MANAGEMENT AND NASA ISSUES, NATIONAL SECURITY AND
INTERNATIONAL AFFAIRS DIVISION, U.S. GENERAL ACCOUNTING
OFFICE

Mr. Chairmen and Members of the Subcommittees:

We appreciate the opportunity to discuss today our reviews of the administrative due process procedures that are in place for individuals for whom security clearances and access to special programs are denied or revoked.

BACKGROUND

In January 1989, the executive branch released a proposed executive order for agency comment that would have established uniform standards for granting and retaining security clearances for federal and contractor employees. One section of the order would have made it possible for agency heads to deny administrative due process to individuals for whom clearances are denied or revoked. Following release of the proposed order, which has not yet been finalized, you asked GAO to review the administrative due process policies and procedures of several agencies. Because of the size of this undertaking, we conducted this review in two phases. The first phase covered security clearance denials and revocations at the Departments of Defense, Energy, and State.¹ The second phase covered denials and revocations of access to special access

¹Security Clearances: Due Process for Denials and Revocations by Defense, Energy, and State (GAO/NSIAD-92-99, May 6, 1992).

programs (SAP) and sensitive compartmented information (SCI) at Defense.

When unfavorable information surfaces or actions occur that indicate that granting or continuing an individual's clearance or access to a SAP or SCI is not clearly consistent with national security interests, the clearance and/or access to classified information may be denied or revoked. Generally, an individual's clearance or access to classified information is suspended pending resolution of the unfavorable information. Before a clearance or SAP/SCI access is denied or revoked, it is generally agreed that an individual should receive fair treatment, including notification, reasons, and a chance to appeal a proposed action, provided that classified information is not subjected to unauthorized disclosure. This process is commonly referred to as administrative due process. There is no legislative requirement or executive order that spells out the due process requirements for government employees. Agencies have set up varying procedures for such employees.

There is a 1960 executive order that applies to contractor employees and their access to classified information, but the order does not mention special access programs.² The executive order specifies procedures for administrative due process for contractor employees, including evidentiary hearings. In compliance with the

²Executive Order 10865, "Safeguarding Classified Information Within Industry" (Feb. 20, 1960).

order, the Departments of Defense and Energy have established procedures for contractor employees in cases where security clearances are denied or revoked. Energy's procedures also apply to its government employees. Defense has separate procedures for its military and civilian employees that are not as extensive as the ones established for contractor employees, because they do not provide for evidentiary hearings. Essentially, Defense gives its military and civilian employees written notice of proposed unfavorable clearance or access determinations and the reasons for them, a chance to respond, and an opportunity to appeal to a higher authority.

The Director of Central Intelligence has established minimum appeal procedures for government and contractor personnel for whom SCI access is denied or revoked. Notification of unfavorable action does not have to be written, and there is no requirement to provide reasons for the action. These procedures, as well as the opportunity to appeal an unfavorable decision, can be waived.

Over 3 million military, civilian, and contractor employees hold clearances granted by Defense, Energy, and State. During fiscal year 1992, Defense granted about 640,700 clearances and about 68,100 SCI accesses. Defense denied about 1,200 clearances and revoked about 2,900. It also denied about 900 SCI accesses and revoked about 500. The total number of SAP access authorizations is unknown, but is estimated to be between 200,000 and 250,000.

The number of denials and revocations of SAP access is also unknown.

RESULTS IN BRIEF

Our reviews indicated that a wide range of practices are observed by Defense, Energy, and State when these agencies deny or revoke clearances of government or contractor employees to classified information, and by Defense when it revokes access to special access programs and sensitive compartmented information. For example, Defense and State suspended clearances for long periods without telling employees why. We also found that Defense suspended many clearances indefinitely, never revoking them, even though the individuals had either been discharged or incarcerated because of the actions that prompted the suspensions. Defense and Energy did not tell individuals how they could obtain investigative information about themselves. Finally, it appeared to us that the appeal procedures at Defense and State could be perceived as lacking independence because the officials hearing the appeals were either involved in the unfavorable determinations or were in the same chain of command.

Our review of administrative due process for Defense's special access programs showed that the Navy and Air Force did not provide the process to government or contractor employees. However, the three services were providing due process when access to sensitive

compartmented information was initially denied or revoked. The Navy and Air Force appeal procedures for sensitive compartmented information, like their procedures for security clearances, could be perceived as lacking independence.

We are particularly concerned about the special access program administrative due process procedures proposed for contractor employees in the recently authorized National Industrial Security Program.³ If these procedures are adopted, contractor employees could be denied due process because the procedures can be waived. Even if the procedures are not waived, their use would result in contractor employees receiving less than what is generally required by DOD's regulation for these programs.

First, I'll briefly discuss the findings in our May 1992 report on due process for security clearance denials and revocations.

CLEARANCES SUSPENDED FOR LONG PERIODS
WITHOUT FORMAL NOTIFICATION OF REASONS

Defense, Energy, and State regulations did not specify how or what individuals were to be told when their access or clearances were suspended. However, two Defense components--the Defense Mapping

³Executive Order 12829 authorized this program on January 6, 1993. It establishes standards for protecting national security information held by contractors and provides for administrative due process procedures for contractor employees.

Agency and Defense Investigative Service (for contractor employees)--had regulations requiring written notices of suspensions with reasons.

Energy, unlike Defense and State, considered suspensions to be the first step in its administrative due process procedures. It specified time frames for completing suspensions and other procedures. Energy's treatment of suspensions may account for its generally shorter suspension periods for Energy and contractor employees, compared to those of Defense and State. As noted in table 1, only 16 percent of the Energy cases in our random sample were in a suspended status over 6 months, compared with 88 percent for Defense and 59 percent for State.

Table 1: Suspensions of Access or Clearances

<u>Months</u>	<u>Air Force*</u>		<u>Energy</u>		<u>State</u>	
	<u>Number</u>	<u>Percent</u>	<u>Number</u>	<u>Percent</u>	<u>Number</u>	<u>Percent</u>
0-3	1	4	14	56	6	22
3-6	2	8	7	28	5	19
6-12	17	65	3	12	9	33
Over 12	<u>6</u>	<u>23</u>	<u>1</u>	<u>4</u>	<u>7</u>	<u>26</u>
Total	<u>26</u>	<u>100</u>	<u>25</u>	<u>100</u>	<u>27</u>	<u>100</u>

*Army and Navy case files contained insufficient data to determine suspension periods.

DOD CLEARANCE SUSPENSIONSNOT FORMALLY RESOLVED ORREPORTED AS REVOCATIONS

DOD's regulation requires commanders and organization heads to suspend individuals' access when derogatory information surfaces. Then, they are to send the cases to the central adjudication offices for disposition. About 70 percent of Army, Navy, and Air Force cases in fiscal year 1990 were not sent forward. The individuals were separated or discharged from the military or incarcerated, with no final action taken. As a result, the individuals' clearances were left indefinitely suspended with no final determination made on the status of the clearances, even though the individuals had been separated from the military.

Further, DOD's annual clearance activity reports substantially understated the number of individuals whose clearances were revoked or could have been revoked for security reasons. For example, DOD reported about 5,300 clearance revocations for the Army, Navy, and Air Force for fiscal year 1990. However, it did not report 11,500 cases that were not sent to the central adjudication offices. In the Air Force, only about 9 percent of the cases were revoked by the central adjudication office; 91 percent, or about 4,200 clearances, were left indefinitely suspended, even though the individuals were no longer in the Air Force or were incarcerated in military or civilian jails.

INDIVIDUALS NOT TOLD HOW TO GET
ACCESS TO INVESTIGATIVE RECORDS

The DOD regulation for government employees and the Energy regulation for government and contractor employees did not require that the agencies inform individuals how to obtain investigative records about themselves. However, the DOD regulation for contractor employees provided that, upon request, employees be furnished with copies of the investigative records supporting unfavorable determinations. State's regulation also provided for notification of access procedures.

PERCEPTION OF INDEPENDENT APPEAL PROCESS
NOT APPARENT AT DEFENSE OR STATE

Energy's due process procedures for security clearances, which are applicable to Energy and contractor employees, give a perception of independence because the individuals hearing appeals are not part of the adjudicative process that produced an unfavorable clearance determination. DOD's regulation leaves the type of appeal process to the individual services and components. State's procedures delineate the officials authorized to hear appeals. The designated appellate panels at State and most of those at DOD did not appear to be administratively independent of the officials responsible for making the clearance denial and revocation decisions being

appealed. Exceptions at DOD were the Army military and civilian employees and most DOD contractor employees.

There was an unusual situation at the Air Force. The three-member appeal panel met at the central clearance office, where two nonvoting members--the Director or Deputy Director of the office and a chief adjudicator, who were responsible for the denial or revocation--were present during the panel's meetings to provide technical assistance. However, appellants were not represented at the meetings.

We recommended that Defense and Energy revise their regulations to provide that suspension notification letters to individuals contain the reasons for unfavorable actions and procedures for requesting access to their investigative records. The two agencies agreed with our recommendations and said that their regulations would be revised accordingly. We also recommended that Defense resolve clearance suspensions more promptly and consider establishing appeal boards that can be perceived as being independent of the groups that make final unfavorable security clearance determinations. Defense said that it would study the makeup of the appeal panels during its review of consolidated adjudication options and review its regulation to ensure that the language ensures that final action is taken on all clearance suspensions.

State did not agree with our recommendations that (1) it should send letters to individuals informing them that their security clearances are suspended, with the reasons for the action, and (2) that appeal boards consist of officials independent from the individuals who made the original unfavorable clearance determinations. State said that by confronting employees directly with the allegations against them and documenting their responses, its employees are provided a form of investigative due process that is normally more effective in resolving such issues than formal statement of charges. With regards to our recommendation about the appeal board, State said that it did not need an intermediary body between the appellant and the decision makers. We do not agree with State. We believe our recommendations are still valid and in line with procedures at Defense and Energy.

Next, I'll briefly discuss the findings in our current review of administrative due process in DOD's special access programs.

NO ADMINISTRATIVE DUE PROCESS

IN NAVY AND AIR FORCE SAPs

The Navy and Air Force were not providing administrative due process to government personnel (military or civilian) or contractor employees for whom access to a SAP was denied or revoked. DOD's personnel security program regulation generally requires it for government personnel, but there is no comparable

DOD regulation requiring it for contractor employees. Although there is a 1960 executive order that requires agencies to provide administrative due process to contractor employees for whom access to classified information is denied or revoked, DOD told us that it believes that the order is not applicable to SAPs. The Army was providing administrative due process to contractor employees and Army personnel.

ADMINISTRATIVE DUE PROCESS

PROVIDED FOR ACCESS TO SCI

The three services provided administrative due process to government and contractor employees for whom access to SCI was denied or revoked, but followed different procedures. The Army followed procedures in DOD's personnel security regulation, while the Navy and Air Force followed the minimum procedures prescribed by the Director of Central Intelligence, which is permitted by DOD's regulation. As a result, individuals associated with the Army were notified that they would be denied access or that their access was being revoked, while those associated with the Navy and Air Force were notified after the access was denied or revoked. The Army used the same procedures for security clearances and accesses for SCI and SAPs, as provided for in the DOD regulation.

CONTRACTOR EMPLOYEES WILL RECEIVE
LESS SAP ADMINISTRATIVE DUE PROCESS IN
THE NATIONAL INDUSTRIAL SECURITY PROGRAM

Administrative due process procedures proposed for contractor employees under the recently authorized National Industrial Security Program are patterned after the Director of Central Intelligence's minimum appeal procedures for SCI. If these procedures are adopted, contractor employees would receive less due process than that generally required by DOD's regulation for SAPs, or they could be denied it completely, as now allowed in the SCI appeal procedures.

The provisions of the SCI procedures require a determination that it is in the national interest to (1) inform an individual of access denial or revocation, (2) inform the individual that the reasons for an unfavorable access action may be requested (no requirement that the reasons be provided), and (3) allow the individual to appeal the unfavorable access action. Under DOD's personnel security regulation 5200.2-R, DOD is required to give an individual written notification of a proposed security clearance or SCI/SAP access denial or revocation action, including the reasons; an opportunity to respond in writing; a written response explaining why the final action is being taken; and an opportunity to appeal to a higher authority within the service or DOD component.

The proposed procedures, with the provision that permits the waiving of administrative due process, are similar to the provision in the January 1989 draft executive order that some Members of the Congress objected to. The draft order's provision would have given agency heads the authority to waive administrative due process.

In addition, DOD told the Members of these two Subcommittees during a February 1990 hearing that it followed the SCI appeal procedures in its SAPs. In fact, however, it actually followed the procedures' waiver authority and did not provide any administrative due process to either contractor or government employees in those programs. That practice is contrary to the DOD regulation covering DOD employees, but is in conformity with the SCI procedures prescribed by the Director of Central Intelligence.

DOD's regulations do not specifically provide for contractor employee SAP administrative due process.

NAVY AND AIR FORCE SAP AND SCI

APPEAL PROCEDURES CAN BE PERCEIVED

AS LACKING INDEPENDENCE

SCI appeal procedures of the Navy and Air Force can be perceived as not being independent because some officials handling the appeals are in the same chain of command as the individuals involved in the unfavorable adjudication of the SCI access or are higher officials

in the same command. For example, in one Navy office that adjudicates SCI access, the three officials adjudicating appeals are all from the same command as the adjudicating office. Therefore, an appellant or others could perceive a lack of independence on the part of the officials adjudicating an appeal.

In contrast, the Army's appeal process provides for appeals to be adjudicated by the Deputy Chief of Staff for Intelligence, who is not in the same command as the central adjudication office. The Army uses the same process for security clearances and SCI/SAP accesses. The Army, pursuant to DOD's personnel security regulation, has one central adjudication office that handles security clearances and SCI/SAP accesses, which may make it easier for it to have an appeal process that appears to be independent. By contrast, the Navy and Air Force have multiple offices that adjudicate security clearances and SCI/SAP accesses and handle appeals.

We recommended that DOD establish criteria for the appeal process that will make appeal panel or board members appear to be independent of the adjudication process; establish procedures that ensure that the services and components are complying with the DOD regulation requiring administrative due process for SAPs; and propose that the National Industrial Security Program establish administrative due process procedures for SAPs that are similar to DOD's procedures for its own personnel.

DOD generally did not agree with our findings. We made some revisions in response to their comments, but basic differences exist with respect to (1) the interpretation of the requirements of DOD's personnel security regulation, 5200.2-R; (2) DOD's practical definition of administrative due process; and (3) the results of our review and accompanying recommendations. DOD said that, consistent with several paragraphs in DOD Regulation 5200.2-R, it sometimes upgraded SAP adjudicative standards to those of the Director of Central Intelligence for SCI, but the approval of the Deputy Secretary of Defense was needed to waive the Director's SCI procedures.

We believe that the regulation's language is very clear in specifying the administrative due process generally required when access to a SAP is denied or revoked. The paragraphs referred to by DOD do not mention administrative due process. They refer to definitions and descriptions of SAPs and the approval needed to use special investigative procedures. The DOD directive governing SAPs requires compliance with all DOD regulations, including 5200.2-R.

With respect to the waiving of the Director of Central Intelligence's procedures for SCI, a DOD official responsible for SAP security policy said that he knew of no approval being given by the Deputy Secretary of Defense to waive the procedures. Even though DOD Regulation 5200.2-R does not specify that the administrative due process procedures may be waived under

extenuating circumstances, we recognize that some programs, because of national security considerations, will be authorized a specific exemption. However, in every SAP case that the Navy and Air Force gave us for review, the individuals did not receive the due process required by DOD Regulation 5200.2-R, nor did they receive the due process specified for SCI by the Director of Central Intelligence. The individuals were not notified that an access had been denied or revoked and were not given reasons for the actions. In contrast, the Army seemed to be providing administrative due process under existing regulations for all individuals for whom access to a SAP or SCI was denied or revoked.

Although DOD did not concur with all of our findings, DOD said that our report will facilitate efforts to refine existing policy documents. DOD intends to revise its regulations to specifically define the requirements for administering due process in SAPs.

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Mr. Chairmen, that concludes my prepared testimony. We would be happy to respond to questions that you may have.

ATTACHMENT I

ATTACHMENT I

DOD AUTHORIZATIONS FOR ACCESS TO
CLASSIFIED INFORMATION - FY 1992

TOP SECRET, SECRET, AND CONFIDENTIAL CLEARANCES

Total held	3,100,000
Granted	640,700
Denied	1,200
Revoked	2,900
Discharged before revocation	12,800

SENSITIVE COMPARTMENTED INFORMATION AUTHORIZATIONS

Total held	214,500
Granted	68,100
Denied	900
Revoked	500

SPECIAL ACCESS PROGRAM AUTHORIZATIONS

Total held estimated at:	200,000 - 250,000
Granted	N/A
Denied	N/A
Revoked	N/A

Note: Figures included military, civilian, and contractor personnel.

ATTACHMENT II

ATTACHMENT II

ACCESS REQUIREMENTS FOR
CLASSIFIED INFORMATION

<u>INFORMATION CATEGORY</u>	<u>REQUIREMENTS FOR ACCESS</u>
TOP SECRET, SECRET and CONFIDENTIAL	<ul style="list-style-type: none"> ● Security clearance at or above level of classified information ● Need-to-know
SENSITIVE COMPARTMENTED INFORMATION (SCI)	<ul style="list-style-type: none"> ● Top secret clearance ● Meets Director of Central Intelligence SCI standards ● Need-to-know
SPECIAL ACCESS PROGRAMS (SAPs)	<ul style="list-style-type: none"> ● Usually Top Secret or Secret clearance ● Meets standards for the program ● Need-to-know

ADMINISTRATIVE DUE PROCESS REQUIRED FOR
DOD PERSONNEL AND CONTRACTOR EMPLOYEES

	<u>DOD Personnel</u>			<u>Contractor Employees</u>		
	<u>Security clearances</u>	<u>SCI access</u>	<u>SAP access</u>	<u>Security clearances</u>	<u>SCI access</u>	<u>SAP access</u>
Executive Order 10865	N/A	N/A	N/A	Yes	*	*
DOD Regulation 5200.2-R	Yes	Yes	Yes	N/A	N/A	N/A
Director of Central Intelligence Directive 1/14	N/A	Yes	N/A	N/A	Yes	N/A

Note: N/A is not applicable.

*It is not clear whether the order covers classified SCI and classified information in a SAP.

Mr. EDWARDS. Mr. McCloskey, any questions?

Mr. MCCLOSKEY. Thank you very much, Mr. Chairman. I appreciate your testimony, ma'am. Not being an expert in this area, maybe some of these questions are obvious or in one way or the other have been answered.

From my reading, one of the things that strikes me is a lack of a Federal uniform standard, both as to definitions of security risk problems and obviously agency-by-agency practice on procedures. Do you have a position on that? Has there been any thought or work in that area done before?

Ms. HEIVILIN. Well, I think each of the agencies think they are handling their programs just fine, and that they would prefer not to have a general law or a general Executive order that covers everything. Different agencies believe there should be different ways of handling things; like the State Department believes they shouldn't give a letter telling that the clearance is going to be suspended that, the person should be confronted, that that works better. So if the matter is differences of opinions about the best way to handle this, yes.

Mr. MCCLOSKEY. Basically, you are saying this kind of work has not been done as far as uniform standards and procedures for the different agencies; correct?

Ms. HEIVILIN. Right.

Mr. MCCLOSKEY. Do you think that is a good idea or not?

Ms. HEIVILIN. We think administrative due process is needed in all these areas for all the employees, whether they are contractor or Government employees. If to clear it up that is what is needed, that is your best judgment.

Mr. MCCLOSKEY. We are going to hear the employees' unions testifying as to the arbitrariness of some of the things that pose or start these security review procedures going. Are there in essence really uniform standards in these different agencies? Or can a person's particular social or religious or emotional bias get into these things to get something going?

Ms. HEIVILIN. The latter part of your question, I think I will ask my colleagues. The first part of the question, certainly under the DCI directive the agency is able to revoke all the parts of the administrative due process, so there is more flexibility in that directive. So if that is the directive being applied, you will have—you will see different—you will see cases where people are not given due process, where you wouldn't if it were not another regulation.

Mr. MCCLOSKEY. Do the agencies have well-defined strictures and definitions of what constitutes problematic behavior to raise one of these inquiries?

Mr. BOKER. I think the standards are pretty much alike. In some cases they are dissimilar, but basically they are alike as far as financial problems, drug problems, criminal conduct, other behavioral, abnormal behavior modes. I don't think there is that much difference in them.

Mr. MCCLOSKEY. Can anonymous inquiries or questions or suggestions trigger action?

Mr. BOKER. Trigger an investigation.

Mr. MCCLOSKEY. Is that often a problem?

Mr. BOKER. Well, I think information like that will trigger an investigation; but I don't believe any agency would take action based upon an anonymous complaint or allegation.

Mr. MCCLOSKEY. What about the different standard attributed to DOD as to governing contract employees and DOD employees? Is there any rational basis for that other than that the contractor employees got covered in the Executive order?

Ms. HEIVILIN. Well, since the Army is applying it to both the military and the Government employees and the contractors, it certainly shows that can be applied to both. It doesn't seem like there should be a question in terms of can we handle that number, the number of cases that that would give us. I think that probably—that tells you it can be and there doesn't seem to be a good reason.

Mr. MCCLOSKEY. The Army is the only service doing that?

Ms. HEIVILIN. Right.

Mr. MCCLOSKEY. I guess that leads to my final question. How about the cost concerns as to full administrative due process? Is that raised as far as time and the necessity to expedite decisions and resolution in this area that, in essence, we cannot have administrative due process for governmental employees?

Ms. HEIVILIN. I don't think it is probably a fair concern. There is probably more of a concern if you were going to have evidentiary-type hearings in every single case; but under the kind of due process that we are describing here, that shouldn't be a concern.

Mr. MCCLOSKEY. You think it can be realistically done and maintained for national security?

Ms. HEIVILIN. Yes.

Mr. MCCLOSKEY. Thank you, Mr. Chairman.

Mr. EDWARDS. I ask unanimous consent the statement of the Honorable Dan Burton be made a part of the record. Without objection.

[The prepared statement of Mr. Burton follows:]

PREPARED STATEMENT OF HON. DAN BURTON, A REPRESENTATIVE IN CONGRESS
FROM THE STATE OF INDIANA

Mr. Chairman, I believe that the first thing the subcommittee members need to keep in mind today is the vital importance of protecting our national security. The process by which security clearances are granted and revoked must reflect this priority. I think that everyone in this room today would agree on this point.

Denying or revoking a security clearance may mean the end of a federal employee's career. Therefore, this action should only be taken when it is clearly necessary. It is certainly not something to be taken lightly. Employees who have security clearances denied or revoked should have an opportunity for redress of their grievances, as long as this would not result in the disclosure of sensitive information that would compromise national security, or hinder agencies in accomplishing their missions.

I look forward to working with my colleagues on the Civil Service Subcommittee to help find workable solutions which protect our national security, and which are fair to federal employees.

Mr. EDWARDS. Don't you think all of these people we are talking about that are subjected to security clearances are entitled to about the same due process, which all Americans should be entitled to?

Ms. HEIVILIN. Yes, we do believe that.

Mr. EDWARDS. Don't you think that they should be standardized quite generally as much as possible?

Ms. HEIVILIN. Yes.

Mr. EDWARDS. Even for outside contractors?

Ms. HEIVILIN. Yes. I think there is a certain level of due process that everyone should be given.

Mr. EDWARDS. Should this be done by regulation or statute, the standardization?

Ms. HEIVILIN. I don't think it makes much difference as long as it gets put in place.

Mr. EDWARDS. Well, after we hear the other witnesses, I think Mr. McCloskey and I would be interested in sending you some more questions and asking the GAO, which is always so helpful, to help us get the model regulations. After all, 4 years ago we had our hearings. There hasn't been that much improvement. A lot of people have been hurt. Some of the horror stories we heard 4 years ago made your hair stand on end. Families were just decimated and devastated by the lack of due process, the secrecy. It was almost like it was Soviet Russia where all of a sudden you wouldn't have a job, but you would never know why. You wouldn't get your clearance. As soon as possible, we are going to take care of that.

I thank you very much. You will respond if we send you questions for the record?

Ms. HEIVILIN. Yes, we will.

Mr. EDWARDS. Thanks again.

Ms. HEIVILIN. Thank you.

Mr. MCCLOSKEY [presiding]. The chairman has given me a task here. Our next panel is comprised of three outstanding individuals: Anthony Quainton, Assistant Secretary for Diplomatic Security, U.S. Department of State; Ray Pollari, Acting Deputy Assistant Secretary of Defense; and Maynard C. Anderson, Assistant Deputy Under Secretary of Defense for Security Policy.

Mr. MCCLOSKEY. Welcome. Chairman Edwards reiterates that adherence to the 5-minute limit on statements would be most appreciated given the schedules today. All your statements are accepted for the record. Please proceed as you would like.

STATEMENT OF ANTHONY C.E. QUANTON, ASSISTANT SECRETARY FOR DIPLOMATIC SECURITY, U.S. DEPARTMENT OF STATE

Mr. QUANTON. Thank you for accepting my statement for the record. I would add one or two comments arising out of the testimony of the GAO which deals with administrative due process at the Department of State.

Since I took over responsibilities for the security program in the Department of State last September, I have made it a particular concern to making sure our employees have due process in all administrative security actions we take. It is our responsibility to be sure we have loyal, trustworthy employees and we impose high standards for those who work in the Department of State and to whom national security information is entrusted.

We have, however, taken seriously the recommendations made by the GAO in its report last year and have made a number of changes I would like to share with you, Mr. Chairman, and with the committee.

We have instituted a procedure which ensures that employees when their clearance is suspended are notified in writing of that suspension and that they are informed of the relevant provisions

of the Foreign Affairs Manual—volume 12 of the Foreign Affairs Manual so they know the area that has led to the suspension of their clearance.

We have endeavored to expedite the process so that these cases are resolved by reinstatement of the clearance or the intent to downgrade or revoke within a period of 90 days. We created a separate unit within the Division of Diplomatic Security. We have given great resources to it. I think we have been successful in expediting the process.

We have also looked at the question—I have personally looked at the question of whether or not the ultimate review panel mentioned in the GAO report which is composed of the Under Secretary for Management, the Director General of the Foreign Service, and myself should be so constituted in the future given the perception which the GAO raises that because I am directly in the line of administrative authority over the Bureau of Diplomatic Security and its investigative arm, whether that is an appropriate composition.

We do intend to make some changes in that composition so that that perception will not continue. I cannot tell the committee exactly what changes we will make because there are a number of possibilities; but we are very aware and alert to the concerns expressed by the GAO and by you, Mr. Chairman; and I think that it is fair to say that in the Department of State, we attach high priority to administrative due process and welcome suggestions as to how that process can be improved and a dialog both with the GAO and with your committees on this subject.

Thank you.

[The prepared statement of Mr. Quainton follows:]

PREPARED STATEMENT OF ANTHONY C.E. QUAINTON, ASSISTANT SECRETARY FOR
DIPLOMATIC SECURITY, U.S. DEPARTMENT OF STATE

Mr. Chairman and Subcommittee Members:

I am pleased to have the opportunity to appear before you today to discuss security clearances and due process practices of the Department of State.

It is absolutely essential to our national security that Federal agencies have in place mechanisms to determine the reliability and trustworthiness of any employee who is authorized access to classified information. At the same time, the very livelihood of such individuals, as well as their personal reputations, can be adversely affected by those determinations, so it is important that they are afforded administrative due process to ensure fairness based on reasonable standards and a rational relationship between the individual's conduct and specified risk factors related to protecting national security information.

The Office of Investigations (DSS/I) within the Department's Bureau of Diplomatic Security is charged with the responsibility for policy and program direction with respect to personnel suitability and security investigations, and for the adjudication of eligibility for appointment to sensitive positions and for security clearances. The Department does not reinvestigate cases when another Federal agency's investigation meets the standard of National Security Directive 63 (NSD 63) in accordance with the provision on transferability, and when no new information requiring adjudication is available that raise doubts that the standard for clearance is met. During 1992, 1,380 investigations of current employees were conducted, either as routine updates or in response to a specific allegation. The clearances of 14 employees were suspended during the course of the year.

Of these 14 suspensions, three were reinstated, six have left State employment, and the remaining five are still pending further investigation or evaluation, medical examination and recommendations, or further proceedings following notices of intent to revoke or reduce clearance. The Department has as its goal, as specified in 12 FAM 233.5, that such cases will be resolved within 90 days, realizing that not all can be resolved in that time frame due to investigative requirements. In those cases not resolved within 90 days, the Director of Diplomatic Security reviews their

status biweekly to ensure progress is continuing toward a timely resolution of all issues.

It may be useful for me to outline the steps necessary to revoke a security clearance:

(1) Upon the development of sufficient and credible information to cause security concern, a written notice of suspension is issued. The notice includes a general statement of the nature of the information of concern and refers to the criteria relevant to the decision. Issuance of a notice is a precautionary action, implying no final judgment, which the Department takes to ensure the protection of classified national security information pending resolution of concerns.

(2) In the event that further investigation and evaluation do not resolve the concerns in the employee's favor, the employee is provided a written notice of intention to revoke (or reduce) his/her clearance, including a detailed statement of the reasons for the decision and specific criteria that are applicable, along with supporting investigative reports.

(3) The employee is afforded access to his or her security file and is given the opportunity to provide a written response. After careful consideration of all investigative materials and any response from the employee, a decision is made by the Director of the Diplomatic Security Service to reinstate the clearance or to revoke (or reduce) it, and the employee is notified of the decision.

(4) Unless clearance is reinstated, the reply to the employee would indicate the employee's right to review the security file and appeal the decision to a panel consisting of senior officials of the Department (with responsibilities for overall management, personnel matters, and security) who have been carefully insulated from the original decision so that they can ensure both protection of national security and fairness to individuals.

Since the appeals panel was instituted in 1987, 172 employees have had their clearances suspended. In 60 of those cases, clearances were reinstated by the Diplomatic Security Service upon resolution of the issues. Only 11 cases have gone to the panel for review of revocation or reduction, two of those cases were reversed. The relatively small number of appeals seems to suggest that there is wide acceptance by affected employees of the Department's system for dealing with security clearance revocations or reductions.

The Department does not pursue clearance denial or revocation procedures once an employee has terminated his or her affiliation with the Department.

We believe that our procedures set a high standard of fairness to our employees and that this was underscored by the findings of the General Accounting Office (GAO) report of last year on this subject. The report, for example, highlighted the Department's practice of advising employees of their rights for access to investigative information, and automatically providing copies of releasable information along with any notice of intent to revoke or reduce a clearance.

The report, of course, also made recommendations for improvement, in two principle areas—the inclusion of reasons for the action in letters advising of the suspension of clearance, and the composition of the appeals panel.

The GAO recommended that the Foreign Affairs Manual (FAM) be revised to require the use of clearance suspension letters and that the letters contain the reasons for the action. In fact, State was regularly using letters to employees notifying them of clearance suspensions, and advising that the action is temporary and does not constitute or imply an intention to revoke clearance, which would never be done without providing a full explanation of the reasons, and an opportunity to appeal. With respect to the reasons for the action, it had been State's belief that it is more appropriate at the preliminary stage to interview the employee in person about the information of concern that has come to the attention of the Department. Many such concerns are immediately resolved. Nonetheless, State has changed its procedures so that the notice of suspension now includes a general statement of the nature of the information of concern, by reference to any criteria that is relevant to the decision to suspend clearance.

The GAO questioned the composition of the appeals panel with respect to the extent of its "perception of being administratively independent." Because all of its members are kept uninvolved in the security decisions made by the Diplomatic Security Service, the panel's decisions are independent, as well as informed and fair. This is an area, however, where we are looking at changes that might be appropriate to ensure that the perception of State's appeal process accurately reflects its independence.

I realize that much of what we are talking about today can sound legalistic and arcane, but well-defined procedures and a sound system of checks and balances are essential to ensure both our national security and fairness to individuals. I appreciate the subcommittees' dedication to these goals and for this opportunity to join

with you in seeking how best to achieve them. I would be pleased to respond to any questions that you or the subcommittee members might have.

Mr. McCLOSKEY. Mr. Pollari.

STATEMENT OF RAY W. POLLARI, ACTING ASSISTANT SECRETARY OF DEFENSE (COUNTERINTELLIGENCE AND SECURITY COUNTERMEASURES), DEPARTMENT OF DEFENSE

Mr. POLLARI. Thank you for the opportunity to testify before your committees. In addition to our statement being in the record, we would request that annex B to the Director of Central Intelligence Directive 1/14, which deals with their due process procedures, be entered into the record.

Mr. McCLOSKEY. Without objection.
[The information follows:]

ANNEX B

APPEALS

POLICY

This annex establishes common appeals procedures for the denial or revocation of access to sensitive compartmented information (SCI) by entities of the Intelligence Community after adjudication pursuant to the provisions of DCID 1/14. This annex is promulgated pursuant to Executive Order 12333, Executive Order 12356, and Section 102 of the National Security Act of 1947. For the purposes of this annex, all references to DCID 1/14 include the basic document and all of its annexes. Any individual who has been considered for initial or continued access to SCI pursuant to the provisions of DCID 1/14 shall, to the extent provided below, be afforded an opportunity to appeal the denial or revocation of such access. This annex supersedes any and all other practices and procedures for the appeal of the denial or revocation of SCI access. This annex will not be construed to require the disclosure of classified information or information concerning intelligence sources and methods, nor will it be construed to afford an opportunity to appeal before the actual denial or revocation of SCI access. In addition, the provisions of DCID 1/14, or any other document or provision of law, will not be construed to create a property interest of any kind in the access of any individual to SCI. Further, since the denial or revocation of access to SCI cannot by the terms of DCID 1/14 render an individual ineligible for access to other classified information solely for that reason, the denial or revocation of SCI access pursuant to the provisions of DCID 1/14 will not be construed to create a liberty interest of any kind.

APPLICABILITY

This annex applies to all United States Government civilian and military personnel, as well as any other individuals, including contractors and employees of contractors, who are considered for initial or continued access to SCI. This annex does not apply to decisions regarding employment and will not be construed to affect or impair Public Law 88-290 or the authority of any entity to effect applicant or personnel actions pursuant to Public Law 88-290, Public Law 86-36, or other applicable law.

SCI ACCESS DETERMINATION AUTHORITY

Adjudications for access to SCI will be made in accordance with DCID 1/14 by a Determination Authority designated by the Senior Official of the Intelligence Community (SOIC) of each entity. Access to SCI shall be denied or revoked whenever it is determined that a person does not meet the security standards provided for in DCID 1/14.

PROCEDURES

1. Individuals will be:

- notified of the denial or revocation of SCI access; notified that they may request to be provided the reasons for such denial or revocation; and afforded an opportunity to appeal.

unless such actions would reveal a covert source, or reveal or verify a particular US Government affiliation with industry that is classified pursuant to Executive Order 12356 and is not otherwise protectable; and in other circumstances where the SOIC determines in writing that an appeal cannot be offered consistent with the national security.

2. Any individual who is given notification and afforded an opportunity to appeal pursuant to paragraph 1 of this annex may, within 45 days of the date on which such individual is notified of the reasons for denial or revocation of SCI access, submit a written appeal of that denial or revocation to the Determination Authority. The written material submitted for consideration may include any information the individual believes will assist the Determination Authority in reviewing the case.
3. After a further review of the case in the light of the written appeal, the individual will be notified of the decision of the Determination Authority.
4. If the Determination Authority reaffirms a denial or revocation of access, the individual may, within 30 days of the date on which such individual is notified of the Determination Authority's reaffirmation, request a final review of the case. In that event, the SOIC or his or her designee, will personally review the case and exercise his or her discretion pursuant to the provisions of DCID 1/14, and will inform the individual of his or her decision, which action will be final and unreviewable.

Mr. POLLARI. I think GAO covered the structure of the different Executive orders that govern what is admittedly a complex series of regulations in this area, so I will not go into that. That is in our statement. What I will do is tell you about a few things that we have done since the 1988 period, particularly more recently, to improve the due process within the Department of Defense.

We have had a number of changes to revising the structure and the policies. One area that we are quite proud of is in the adjudicative area. In 1988, in an effort to make sure that all the people who look at these individual cases are achieving some standardization so that due process is there and consistency is there, we initiated an adjudicator course in Richmond which we have had both DOD and external agencies attend; some 400, if memory serves correctly, have gone through this.

We saw the need for a more advanced course. We have initiated that. Our first class in that graduated on the 30th of April. So we think that that is an important step forward.

The administration under President Bush also approved the creation of a single scope background investigation which is applied to both SCI information and collateral, the normal top secret. What this does is encourages the different agencies to accept each other's investigations and we regard that as a definite step forward.

Mr. EDWARDS. Is that in writing? Do you have that? Can you submit that to us?

Mr. POLLARI. We can, Mr. Chairman.

Mr. EDWARDS. That applies to the Department of Defense and who else?

Mr. POLLARI. It applies across the Government.

Mr. EDWARDS. Across the Government? The purpose is some sort of regularity?

Mr. POLLARI. So we will be able to do the same kind of investigative activity for forming the basis for making determination on clearances. In the past, different standards there had necessitated another agency reinvestigating at least part of the person's background so they would cover the things they were interested in.

Mr. EDWARDS. Thank you.

[The information follows:]

This Fact Sheet was created to provide information about National Security Directive 63, "Single Scope Background Investigations," signed by President Bush on October 21, 1991.

FACT SHEET

SINGLE SCOPE BACKGROUND INVESTIGATIONS

The President has signed a National Security Directive establishing single scope background investigative standards. These standards shall be adopted by all Executive branch agencies and departments granting individuals access to Collateral Top Secret/National Security Information and Sensitive Compartmented Information.

Scope

Past ten (10) years or to age 18, whichever is less.

Expansion of Investigation

The investigation may be expanded as necessary, to resolve issues and/or address employment standards unique to individual agencies.

National Agency Check

Checks on subject and spouse/cohabitant of investigative and criminal history files of the Federal Bureau of Investigation, including submission of fingerprint records on the subject, and such other national agencies (DCII, INS, OPM, CIA, etc.) as appropriate to the individual's background.

Subject Interview

Required in all cases and shall be conducted by trained security, investigative, or counterintelligence personnel to ensure full investigative coverage.

An additional personal interview shall be conducted when necessary to resolve any significant information and/or inconsistencies developed during the investigation. In departments or agencies with policies sanctioning the use of the polygraph for personnel security purposes, the personal interview may include a polygraph examination, conducted by a qualified polygraph examiner.

Birth

Independent certification of date and place of birth received directly from appropriate registration authority.

Citizenship

Subject must be a U.S. citizen. Independent verification of citizenship received directly from appropriate registration authority. For foreign-born immediate family members, verification of citizenship or legal status is also required.

Education

Independent verification of most recent or most significant claimed attendance and/or degree/diploma within the scope of investigation via sealed transcript received directly from the institution. If all education is outside of the investigative scope, the last education above high school level will be verified.

Employment

Direct verification through records of all periods of employment within scope but in any event the most recent two (2) years. Personal interviews of two sources (supervisor/coworkers) for each employment of six months or more shall be attempted. In the event that no employment exceeds six months, interviews of supervisor/coworkers shall be attempted. All periods of unemployment in excess of sixty (60) days shall be verified through records and/or sources. All prior federal/military service and type of discharge(s) shall be verified.

References

Four required (at least three of which are developed). To the extent practical, all should have social knowledge of subject and collectively span the entire scope of the investigation.

As appropriate, additional interviews may include cohabitant(s), ex-spouses, and relative(s). Interviews with psychological/medical personnel are to be accomplished as required to resolve issues.

Neighborhood

Interviews with neighbors for last five years if residence exceeds six months. Confirmation of current residence shall be accomplished regardless of length to include review of rental records if necessary. In the event no residence exceeds six months, interview of neighbors should be undertaken.

Credit

Verification of the subject's financial status and credit habits of all locations where subject has resided, been employed, or attended school for six months or more for the last seven (7) years.

Local Agency Checks

A check of appropriate Police records covering all locations where subject has resided, been employed, or attended school for six months or more during the scope of investigation, to include current residence regardless of duration. In the event that no residence, employment, or education exceeds six months, local agency checks should be performed.

Public Records

Verification of divorce(s), bankruptcy, etc., and any other court (civil or criminal) actions to which subject has been or is a party within the scope of investigation, when known or developed.

Transferability

Investigations satisfying the scope and standards specified above are transferable between agencies and shall be deemed to meet the investigative standards for access to Collateral Top Secret/ National Security Information and Sensitive Compartmented Information. No further investigation or reinvestigation prior to revalidation every five years will be undertaken unless the agency has substantial information indicating that the transferring individual may not satisfy eligibility standards for clearance or the agency head determines in writing that to accept the investigation would not be in the national security interest of the United States.

Notes

Immediate family -- spouse, parents, brothers, sisters, children, and cohabitant of the individual requiring access.

Mr. POLLARI. Currently we are trying to do the same. This is a third achievement that is underway—we are trying to get common adjudicative standards analogous to the way we have done in the investigative areas so the agencies will accept each other's clearances. We regard that as a major step forward.

Mr. EDWARDS. Are you accepting them now? Where a person has been cleared by the State Department, do you accept that clearance?

Mr. POLLARI. We do, but there is still a need in some cases to readjudicate the individual's clearance based upon the different standards that are applied as GAO has testified here. The standard for SCI access may be more rigorous in some respects; similarly, Mr. Anderson will describe the special access program standards, which might cause an access determination, adjudication to be different.

Mr. EDWARDS. Very well.

Mr. POLLARI. We also have looked at the GAO report, May 1992, and agree with almost everything that was in there. We think the recommendations on better suspension process are very solid and we are working to implement those. We hoped to do that by the end of 1992. We were unable to get it through our own system. We will not give up on that. We intend to go forward with that effort.

We are also in favor of the recommendation to advise each of the subjects of the availability of the investigative file; and we can do that.

The one we are still studying is a complete, independent appeal board. We have just completed a very good analysis of this. The personnel research outfit we have in Monterey, CA, has done an extensive look at it. They proposed several configurations and structures, which I think would achieve what GAO and we want to do to improve that area.

So we are moving forward in each of those. I assure you we have a very strong feeling about due process being fair to people and not being arbitrary. I think the DOD procedures of written notice of intent to revoke or deny a clearance, the opportunity to respond in writing, and then the review procedures which follow that do give administrative due process to people in our system.

Thank you.

[The prepared statement of Mr. Pollari follows:]

PREPARED STATEMENT OF RAY W. POLLARI, ACTING DEPUTY ASSISTANT
SECRETARY OF DEFENSE (COUNTERINTELLIGENCE AND SECURITY
COUNTERMEASURES), DEPARTMENT OF DEFENSE

MR. CHAIRMEN AND MEMBERS, THANK YOU FOR THE OPPORTUNITY TO APPEAR BEFORE A JOINT SESSION OF THE TWO SUBCOMMITTEES TODAY TO ADDRESS DEPARTMENT OF DEFENSE POLICY REGARDING NOTICE AND APPEAL PROCEDURES FOR DOD MILITARY, CIVILIAN, AND CONTRACTOR PERSONNEL WHO HAVE HAD THEIR SECURITY CLEARANCES OR SENSITIVE COMPARTMENTED INFORMATION (SCI) ACCESS DENIED OR REVOKED.

IN DOD, ACCESS TO CLASSIFIED INFORMATION FALLS INTO FOUR BASIC CATEGORIES. THESE INCLUDE: 1) PERSONNEL SECURITY CLEARANCE (AT THE TOP SECRET, SECRET, OR CONFIDENTIAL LEVEL FOR MILITARY AND CIVILIAN PERSONNEL), 2) INDUSTRIAL SECURITY CLEARANCE FOR CONTRACTOR PERSONNEL AT THE SAME LEVELS, 3) SENSITIVE COMPARTMENTED (INTELLIGENCE) INFORMATION (SCI) ACCESS DETERMINATION FOR MILITARY, CIVILIAN, AND CONTRACTOR PERSONNEL, AND 4) SPECIAL ACCESS PROGRAM (SAP) ACCESS DETERMINATION. A DOD MILITARY, CIVILIAN OR CONTRACTOR EMPLOYEE COULD EASILY FALL INTO SEVERAL CATEGORIES AT THE SAME TIME, E.G. SECURITY CLEARANCE, SCI ACCESS, AND SAP ACCESS. MY REMARKS ARE CONFINED TO THE FIRST THREE AREAS BECAUSE THEY ARE THE ONES FOR WHICH MY OFFICE HAS PRIMARY POLICY RESPONSIBILITY. EACH IS GOVERNED BY DIFFERENT REGULATORY AUTHORITIES:

1) E.O 10450, "*SECURITY REQUIREMENTS FOR GOVERNMENT EMPLOYMENT*," SERVES AS THE AUTHORITY FOR SECURITY INVESTIGATIONS AND PERSONNEL SECURITY DETERMINATIONS FOR CIVILIAN EMPLOYEES OF THE FEDERAL GOVERNMENT. WHILE E.O. 10450 STATES THAT ALL PERSONS SHOULD RECEIVE FAIR AND IMPARTIAL TREATMENT, IT IS SILENT WITH REGARD TO SPECIFIC NOTICE AND APPEAL PROCEDURES. ALTHOUGH THERE IS NO SPECIFIC EXECUTIVE ORDER CONTAINING CLEARANCE REQUIREMENTS FOR MILITARY PERSONNEL, EXISTING DOD REGULATIONS DERIVE FROM THE AUTHORITY VESTED IN THE SECRETARY OF DEFENSE TO MAKE NECESSARY RULES AND REGULATIONS TO RUN THE DEPARTMENT. CLEARANCE PROCEDURES FOR DOD MILITARY AND CIVILIAN PERSONNEL ARE CONTAINED IN DOD REGULATION 5200.2-R AND REQUIRE 1) A WRITTEN NOTICE OF INTENT TO DENY OR REVOKE A CLEARANCE WITH DETAILED REASONS; 2) AN OPPORTUNITY TO RESPOND IN WRITING; 3) A WRITTEN DECISION BY THE ADJUDICATIVE AUTHORITY; AND 4) AN OPPORTUNITY TO APPEAL, IN WRITING, AN UNFAVORABLE DECISION.

2) E.O 10865, "*SAFEGUARDING CLASSIFIED INFORMATION WITHIN INDUSTRY*," GOVERNS THE GRANTING OF CLASSIFIED ACCESS TO CONTRACTOR EMPLOYEES AND CONTAINS SPECIFIC NOTICE AND APPEAL PROCEDURES, TO INCLUDE A HEARING. PORTIONS OF DOD 5200.2-R WHICH DO NOT CONFLICT WITH E.O. 10865 APPLY TO CONTRACTOR EMPLOYEES.

INTELLIGENCE SOURCES AND METHODS AND TO ESTABLISH STANDARDS GOVERNING ACCESS TO SENSITIVE COMPARTMENTED INFORMATION FOR MILITARY, CIVILIAN AND CONTRACTOR PERSONNEL. WHILE E.O 12333 DOES NOT CONTAIN SPECIFIC ACCESS ELIGIBILITY CRITERIA OR PROCEDURAL REQUIREMENTS, SUCH GUIDELINES ARE CONTAINED IN DIRECTOR OF CENTRAL INTELLIGENCE DIRECTIVE 1/14, *"MINIMUM PERSONNEL SECURITY STANDARDS AND PROCEDURES GOVERNING ELIGIBILITY FOR ACCESS TO SENSITIVE COMPARTMENTED INFORMATION."*

THE NOTICE AND APPEAL PROCEDURES FOR SCI ACCESS ARE SIMILAR TO THOSE FOR SECURITY CLEARANCES, BUT DIFFER IN ONE RESPECT. THE SCI DUE PROCESS PROCEDURE REQUIRES THAT THE INDIVIDUAL BE NOTIFIED THAT HIS OR HER SCI ACCESS HAS BEEN DENIED OR REVOKED AND DOES NOT REQUIRE A STATEMENT OF REASONS FOR THE ACTION, UNLESS SUBSEQUENTLY REQUESTED BY THE PERSON AFFECTED. SEVERAL DOD ADJUDICATION FACILITIES ARE CURRENTLY PROVIDING A STATEMENT OF REASONS AS PART OF THE SCI DUE PROCESS PROCEDURES. BOTH THE DCI DIRECTIVE AND THE DOD REGULATION CONTAIN SIMILAR PROVISIONS PERMITTING WAIVER OF THE NORMAL NOTICE AND APPEAL PROCEDURES IN THE INTERESTS OF NATIONAL SECURITY. TO THE BEST OF MY KNOWLEDGE THESE PROVISIONS HAVE NOT BEEN INVOKED BY DOD ADJUDICATION FACILITIES FOR SECURITY CLEARANCE OR SCI ACCESS DETERMINATIONS.

HAVING DESCRIBED THE REGULATORY BACKGROUND UNDERLYING THE DOD PERSONNEL SECURITY PROGRAM, I WILL

BRIEFLY DESCRIBE THE PROGRAMMATIC AND ORGANIZATIONAL CONTEXT.

THE OFFICE OF THE DEPUTY ASSISTANT SECRETARY OF DEFENSE (COUNTERINTELLIGENCE & SECURITY COUNTERMEASURES), IN THE OFFICE OF THE ASSISTANT SECRETARY OF DEFENSE FOR COMMAND, CONTROL, COMMUNICATIONS AND INTELLIGENCE, IS RESPONSIBLE FOR THE DEVELOPMENT, COORDINATION, AND IMPLEMENTATION OF ALL POLICIES AND PROCEDURES RELATING TO THE CONDUCT OF PERSONNEL SECURITY BACKGROUND INVESTIGATIONS AND ISSUANCE, DENIAL AND REVOCATION OF DOD SECURITY CLEARANCES. WE ALSO ARE ACTIVE PARTICIPANTS ON NUMEROUS INTERAGENCY GROUPS THAT DEVELOP POLICIES AND PROCEDURES RELATING TO OTHER PERSONNEL SECURITY PROGRAMS, SUCH AS THE INTELLIGENCE COMMUNITY'S PROGRAM FOR PROTECTION OF SENSITIVE COMPARTMENTED INFORMATION.

DOD CURRENTLY HAS 18 ADJUDICATION FACILITIES AUTHORIZED TO GRANT, DENY OR REVOKE SECURITY CLEARANCES AND SCI ACCESS FOR DOD MILITARY, CIVILIAN AND CONTRACTOR PERSONNEL. THESE INCLUDE ARMY (1), AIR FORCE (FORMERLY 2, NOW 1), NAVY (3, SOON TO BE 1), ONE FOR CONTRACTOR PERSONNEL, JOINT STAFF, AND ONE FOR EACH OF THE DEFENSE AGENCIES. THERE ARE MORE THAN 400 PERSONNEL INVOLVED IN MAKING PERSONNEL SECURITY CLEARANCE ELIGIBILITY DETERMINATIONS AT THESE FACILITIES.

THERE ARE APPROXIMATELY 3 MILLION CLEARED MILITARY, CIVILIAN, AND CONTRACTOR PERSONNEL IN DOD. IN FY 92, DOD AUTHORITIES PROCESSED 700,000 ADJUDICATIVE ACTIONS FOR TOP SECRET, SECRET, CONFIDENTIAL, SCI, AND OTHER SENSITIVE DUTIES AND ACCESSES. ABOUT 2.5% OF THESE ACTIONS RESULTED IN AN UNFAVORABLE PERSONNEL SECURITY DETERMINATION. IN ADDITION TO DENIALS AND REVOCATIONS OF CLEARANCE OR ACCESS, THE TOTAL INCLUDES DETERMINATIONS FOR MILITARY AND CIVILIAN PERSONNEL WHO WERE DISCHARGED OR TERMINATED FROM EMPLOYMENT THROUGH OTHER ADMINISTRATIVE PROCEDURES BEFORE THE NOTICE AND APPEALS PROCESS HAD BEEN COMPLETED.

THE DECISION TO DENY OR REVOKE A SECURITY CLEARANCE OR SCI ACCESS IS BASED ON ALL AVAILABLE INFORMATION AND APPLICATION OF ESTABLISHED ADJUDICATION CRITERIA. IT IS RARE FOR THERE TO BE A DISPUTE OVER THE FACTS. THIS IS BECAUSE DOD POLICY REQUIRES A THOROUGH INVESTIGATION TO RESOLVE OUTSTANDING ISSUES AND THE CONDUCT OF A PERSONAL INTERVIEW WITH THE SUBJECT BY A TRAINED INVESTIGATOR IN AN ATTEMPT TO PROVE OR DISPROVE ANY SIGNIFICANT ADVERSE INFORMATION THAT HAS BEEN DEVELOPED. IN MOST CASES, THE SUBJECT CONFIRMS THE FACTS SURROUNDING THE ISSUE IN QUESTION. ONCE THE INVESTIGATION HAS BEEN COMPLETED, IT BECOMES THE RESPONSIBILITY OF THE ADJUDICATOR TO APPLY THE APPROPRIATE STANDARDS TO THE ISSUES IN THE CASE AND DETERMINE IF THERE ARE ANY CIRCUMSTANCES OR INFORMATION PRESENT TO MITIGATE THE SERIOUSNESS OF THE CONDUCT.

DOD POLICY PROVIDES FOR AT LEAST TWO LEVELS OF ADJUDICATIVE REVIEW BY TRAINED ADJUDICATORS BEFORE AN UNFAVORABLE CLEARANCE ACTION MAY BE INITIATED. ADDITIONAL LEVELS OF ADJUDICATIVE REVIEW ARE ADDED AS THE INDIVIDUAL APPEALS THE PROPOSED ACTION AND BEFORE A DECISION IS MADE TO DENY OR REVOKE THE CLEARANCE OR ACCESS. FOLLOWING A DENIAL OR REVOCATION OF CLEARANCE OR ACCESS BY ONE OF THE 18 ADJUDICATIVE FACILITIES, THE PERSON AFFECTED HAS THE RIGHT TO APPEAL THE ACTION TO AN AUTHORITY AT THE NEXT HIGHER LEVEL. THIS APPELLATE AUTHORITY WILL DIFFER DEPENDING ON THE AGENCY. WHEREAS AN ARMY APPEAL WOULD GO TO A SENIOR OFFICIAL OF THE ARMY STAFF WHO IS OUTSIDE OF THE CHAIN OF COMMAND OF THE ADJUDICATION FACILITY, A DEFENSE AGENCY APPEAL WOULD NORMALLY BE DIRECTED TO THE DIRECTOR OF THAT AGENCY. FOR NAVY, A THREE MEMBER PANEL OF SENIOR OFFICIALS IS CONVENED TO CONSIDER AND RULE ON THE APPEAL.

THE DOD PERSONNEL SECURITY PROGRAM HAS BEEN SUBJECT TO A NUMBER OF IMPORTANT CHANGES OVER THE PAST FEW YEARS AND IS IN THE PROCESS OF REVISING EXISTING POLICIES AND PROCEDURES THAT WILL SERVE TO FURTHER ENHANCE THE PROCEDURAL FAIRNESS FOR DOD EMPLOYEES. I WOULD LIKE TO UPDATE YOU ON DEVELOPMENTS IN THIS AREA AND ADVISE YOU OF OTHER PLANNED ENHANCEMENTS THAT ARE UNDER CONSIDERATION.

IN DECEMBER 1992, FOLLOWING A STUDY BY THE DEFENSE PERSONNEL SECURITY RESEARCH CENTER (PERSEREC), THE DEPUTY SECRETARY OF DEFENSE APPROVED THE CONSOLIDATION OF THE

CURRENT 18 DOD ADJUDICATION FACILITIES INTO EIGHT BY FY 94. IN ADDITION TO REDUCING COSTS, THIS ACTION WILL HELP ENSURE A MORE UNIFORM APPLICATION OF BOTH THE DOD AND DCI (SCI) ADJUDICATION STANDARDS AS WELL AS THE NOTICE AND APPEAL PROCEDURES. DEFENSE AGENCY APPEALS WILL GO TO AN AUTHORITY OUTSIDE THE EMPLOYING AGENCY.

A JOINT DOD/INTELLIGENCE COMMUNITY INITIATIVE WAS APPROVED BY THE PRESIDENT IN OCTOBER 1991 IN NATIONAL SECURITY DIRECTIVE 63 ENTITLED "*SINGLE SCOPE BACKGROUND INVESTIGATION.*" FOR THE FIRST TIME, A UNIFORM INVESTIGATIVE SCOPE FOR TOP SECRET CLEARANCE AND SCI ACCESS WAS IMPLEMENTED WITHIN THE EXECUTIVE BRANCH. THIS INITIATIVE WILL AVOID THE NEED FOR THE CONDUCT OF NEW INVESTIGATIONS WHEN AN EMPLOYEE MOVES FROM ONE POSITION REQUIRING CLASSIFIED ACCESS TO ANOTHER IN A DIFFERENT AGENCY, AND WILL GREATLY ENHANCE RECIPROCITY OF SECURITY CLEARANCES THROUGHOUT THE EXECUTIVE BRANCH.

ANOTHER INTERAGENCY EFFORT IS UNDERWAY TO IMPLEMENT A SINGLE SET OF ADJUDICATIVE STANDARDS FOR DETERMINING ELIGIBILITY FOR A SECURITY CLEARANCE AND ACCESS TO SCI THROUGHOUT THE EXECUTIVE BRANCH. IF ADOPTED, THE NEW SINGLE STANDARD WILL SERVE NOT ONLY TO PROMOTE THE GOAL OF MORE CONSISTENT ADJUDICATIVE DECISIONS THROUGHOUT THE EXECUTIVE BRANCH BUT WILL ALSO ENHANCE THE RECIPROCAL ACCEPTANCE OF THOSE DECISIONS WITHIN AND BETWEEN AGENCIES. MUCH OF THE INITIAL WORK FOR THIS PROJECT WAS ACCOMPLISHED BY THE DEFENSE

PERSONNEL SECURITY RESEARCH CENTER AND WAS BASED ON OUR CONTINUING DESIRE TO ENSURE THAT THE CLEARANCE ADJUDICATIVE STANDARDS ARE REASONABLE AND THAT A RATIONAL RELATIONSHIP EXISTS BETWEEN AN INDIVIDUAL'S CONDUCT AND THE ABILITY TO PROTECT CLASSIFIED INFORMATION.

IN 1988, DOD ESTABLISHED A TWO WEEK BASIC TRAINING COURSE FOR DOD ADJUDICATORS AT THE DEPARTMENT OF DEFENSE SECURITY INSTITUTE IN RICHMOND, VIRGINIA. SINCE THAT TIME, 392 DOD AND NON-DOD ADJUDICATOR PERSONNEL HAVE COMPLETED THE TRAINING. IT SUBSEQUENTLY BECAME APPARENT THAT THERE WAS A NEED FOR AN ADVANCED ADJUDICATOR COURSE FOR SENIOR ADJUDICATORS WHICH FOCUSED ON MORE COMPLEX CASES WITH DETAILED EMPHASIS ON PROPER IMPLEMENTATION OF DOD NOTICE AND APPEAL PROCEDURES. I AM PLEASED TO REPORT THAT THE FIRST ITERATION OF THIS COURSE WAS COMPLETED ON 30 APRIL 1993, AND WE LOOK FORWARD TO SENDING ALL DOD SENIOR ADJUDICATORS TO THIS COURSE OVER THE NEXT FEW YEARS. SUCH A COURSE, WHICH WE HOPE TO SHARE WITH OTHER EXECUTIVE BRANCH AGENCIES, WILL HELP ENSURE THE APPLICATION OF CONSISTENT AND FAIR NOTICE AND APPEAL PROCEDURES TO ALL DOD EMPLOYEES.

DOD SECURITY OFFICIALS FULLY APPRECIATE THE IMPACT THAT A DENIAL OR REVOCATION OF A SECURITY CLEARANCE CAN HAVE ON AN INDIVIDUAL'S LIFE, ESPECIALLY SINCE SUCH ACTIONS CAN ADVERSELY AFFECT ONE'S CONTINUED EMPLOYMENT. WHILE DOD DATA CONSISTENTLY SHOW THAT THE OVERALL ANNUAL RATE FOR SUCH UNFAVORABLE ACTIONS IS RELATIVELY LOW COMPARED TO THE

NUMBER OF CLEARANCE ACTIONS TAKEN IN A YEAR, THIS STILL AMOUNTS TO MORE THAN 4,000 DENIAL OR REVOCATION ACTIONS IN FY92. THEREFORE, WHILE THE PRIMARY GOAL OF OF DOD'S PERSONNEL SECURITY PROGRAM MUST BE TO PROTECT THE NATIONAL SECURITY FROM PERSONS WHO ARE UNRELIABLE OR UNTRUSTWORTHY, WE REMAIN SENSITIVE TO THE NEED FOR FAIRNESS TO INDIVIDUALS AND ATTACH GREAT IMPORTANCE TO THE EQUITABLE TREATMENT OF PERSONS SUBJECT TO UNFAVORABLE PERSONNEL SECURITY DETERMINATIONS. ACCORDINGLY, DOD ADJUDICATION FACILITIES PROVIDE WRITTEN NOTICE OF THE INTENDED ACTION, INCLUDING THE REASONS, AN OPPORTUNITY TO RESPOND IN WRITING, AND AN OPPORTUNITY TO APPEAL AN ADVERSE DECISION.

A RECENT DRAFT PERSEREC DUE PROCESS STUDY, INITIATED BY DOD IN RESPONSE TO THE MAY 1992 GAO REPORT, REVEALED THAT APPROXIMATELY HALF OF ALL MILITARY, CIVILIAN AND CONTRACTOR PERSONNEL THAT ARE NOTIFIED OF THE PROPOSED DENIAL OR REVOCATION OF CLEARANCE OR ACCESS DO NOT RESPOND. OF THE HALF THAT DO RESPOND, ABOUT 40% OF THE REPLIES LEAD TO THE REVERSAL OF THE PROPOSED ACTION. I BELIEVE THAT THIS RESULT IS TESTIMONY TO THE QUALITY OF BOTH THE INVESTIGATIVE PRODUCT AND THE ADJUDICATIVE PROCESS, AS WELL AS TO THE ABILITY OF THE SYSTEM TO RESPOND TO NEW MITIGATING FACTORS RAISED AS A RESULT OF THE NOTICE AND APPEAL PROCEDURES.

THE MAY 1992 GAO REPORT ON DUE PROCESS MADE A NUMBER OF RECOMMENDATIONS WHICH ADDRESSED WRITTEN NOTIFICATION OF ACCESS SUSPENSIONS AND THEIR EXPEDITIOUS RESOLUTION,

PROCURING ONE'S INVESTIGATIVE FILE, AND INDEPENDENT DOD APPEAL BOARDS . DOD IS IN THE PROCESS OF IMPLEMENTING ALL OF THE RECOMMENDATIONS AND IS REVIEWING THE ONE PERTAINING TO INDEPENDENT APPEAL BOARDS. ATTACHED IS A MORE DETAILED SUMMARY OF THE RECOMMENDATIONS AND THE SPECIFIC ACTIONS UNDERWAY TO IMPLEMENT THEM.

WITH REGARD TO THE RECOMMENDATION PERTAINING TO APPEAL BOARDS, THE DRAFT PERSEREC DUE PROCESS STUDY CONTAINS A COMPREHENSIVE REVIEW OF DOD APPEAL POLICIES, PROCEDURES, AND COSTS. THE STUDY IS CURRENTLY UNDER REVIEW AND CONTAINS RECOMMENDATIONS FOR IMPROVING THE UNIFORMITY AND INDEPENDENCE OF DOD APPEAL PRACTICES. WHILE NO DECISIONS WILL BE MADE UNTIL THE REPORT HAS BEEN COORDINATED AND FINALIZED, I BELIEVE THAT POSITIVE STEPS CAN BE TAKEN TO IMPROVE UPON THE CURRENT APPEAL PROCEDURES WHICH WILL SATISFY THE INTENT OF GAO AND THE CONCERNS OF THE COMMITTEES.

MR. CHAIRMEN AND MEMBERS OF THE COMMITTEES, I CAN ASSURE YOU THAT MY STAFF AND I ARE SENSITIVE TO YOUR CONCERNS IN THIS IMPORTANT AREA. WE WILL WORK WITH YOU TO ENSURE THAT OUR SECURITY CLEARANCE DECISIONS CONTINUE TO BE RATIONAL AND FAIR TO THE INDIVIDUAL, WHILE AT THE SAME TIME PROTECTING THE INTERESTS OF NATIONAL SECURITY. I WOULD BE HAPPY TO RESPOND TO ANY QUESTIONS YOU MAY HAVE.

**1992 GAO DUE PROCESS REPORT RECOMMENDATIONS AND DOD
PLANNED IMPLEMENTATION ACTIONS**

**1) REVISE SUSPENSION PROCEDURES TO REQUIRE DETAILED
NOTIFICATION LETTERS TO INDIVIDUALS.**

DOD ACTION: CONCUR. ALL DOD COMPONENTS WILL BE REQUIRED TO NOTIFY AN INDIVIDUAL IN WRITING, TO INCLUDE REASONS, WHEN SUSPENSION OF ACCESS OCCURS.

**2) REPORT SUSPENSION ACTIONS PROMPTLY TO THE CENTRAL
ADJUDICATION FACILITY.**

DOD ACTION: CONCUR. ALL DOD COMPONENTS WILL BE REQUIRED TO PROMPTLY REPORT ALL SUSPENSION ACTIONS TO THE CENTRAL ADJUDICATION FACILITY, BUT NOT LATER THAN 10 DAYS FROM THE DATE OF THE SUSPENSION ACTION.

**3) REVISE SUSPENSION PROCEDURES TO REQUIRE TIME LIMITS FOR
SUBSEQUENT ACTIONS.**

DOD ACTION: DOD COMPONENTS MUST MAKE EVERY EFFORT TO RESOLVE SUSPENSION CASES AS EXPEDITIOUSLY AS POSSIBLE. SUSPENSION CASES EXCEEDING 180 DAYS SHALL BE CLOSELY MONITORED AND MANAGED UNTIL FINALLY RESOLVED. SUSPENSION CASES PENDING IN EXCESS OF 12 MONTHS WILL BE REPORTED TO OSD FOR REVIEW AND APPROPRIATE ACTION.

**4) REVISE SUSPENSION PROCEDURES TO ENSURE A FINAL RESOLUTION
OF ALL CLEARANCE SUSPENSION ACTIONS.**

DOD ACTION: CONCUR. DOD COMPONENTS WILL BE REMINDED TO COMPLY WITH EXISTING POLICY WHICH PROVIDES FOR CONTINUATION OF NOTICE AND APPEAL ACTION EVEN WHILE A PERSON MAY BE UNDERGOING PROCESSING FOR DISCHARGE OR TERMINATION.

5) REQUIRE THAT INDIVIDUALS BE TOLD BY LETTER OF PROCEDURES FOR REQUESTING ACCESS TO INVESTIGATIVE RECORDS ABOUT THEMSELVES.

DOD ACTION: CONCUR. DOD COMPONENTS WILL BE REQUIRED TO ADVISE THE SUBJECT OF A DENIAL OR REVOCATION ACTION WHERE HE OR SHE CAN GO TO ACQUIRE THEIR INVESTIGATIVE FILE. MANY ADJUDICATIVE FACILITIES ARE ALREADY IMPLEMENTING THIS PROVISION.

6) DOD SHOULD CONSIDER ESTABLISHING AN INDEPENDENT BOARD OR BOARDS TO HEAR APPEALS FROM DEFENSE EMPLOYEES.

DOD ACTION: DOD TASKED THE DEFENSE PERSONNEL SECURITY RESEARCH CENTER (PERSEREC) TO UNDERTAKE A STUDY OF EXISTING NOTICE AND APPEAL PROCEDURES IN DOD AND MAKE RECOMMENDATIONS FOR IMPROVEMENT. A DRAFT OF THAT STUDY WAS RECEIVED LAST WEEK AND IS UNDERGOING REVIEW. GAO WILL BE ADVISED AS SOON AS A FINAL DECISION HAS BEEN MADE REGARDING IMPLEMENTATION OF ONE OF THE PERSEREC RECOMMENDATIONS.

Mr. McCLOSKEY. Mr. Anderson, please proceed.

STATEMENT OF MAYNARD C. ANDERSON, ASSISTANT DEPUTY UNDER SECRETARY OF DEFENSE FOR SECURITY POLICY, DEPARTMENT OF DEFENSE

Mr. ANDERSON. I would like to address some of the changes in our procedures that have taken place in the last 3 years, as well as some ongoing initiatives designed to satisfy our requirements both to insure the national security and fairness to individuals. Special access programs also use the provisions of the DOD Directive 5200.2-R as outlined by the GAO unless an upgrade of that access criteria has been specifically authorized by the Deputy Secretary or the Secretary of Defense. In those cases, the provisions of annex B of the Director of Central Intelligence Directive 1/14 are often used as the baseline document. That is a document we will submit for the record, Mr. Chairman.

[The information appears above at p. 35]

Mr. ANDERSON. There is a comparison between those two regulations that I think underscores two principal differences. The first one is that DCID 1/14 provisions require that individuals be notified of the denial or revocation subsequent to the action being taken, while the DOD 5200.2-R requires that the individual be notified before the denial or revocation is to take place. The second distinction is that while both of those directives include provisions to ensure that the applicant is provided reasons for the denial or revocation under DCID procedures, the individual must first request the reasons be provided.

They both also provide an exemption from the required appeal procedures if their application would be inconsistent with the national security.

In special access programs, security enhancements include the use of DCID 1/14 access criteria when necessary are established as part of the program's overall security procedures.

Now prior to 1992, such procedures were approved by the secretary of the military department involved or, for other DOD components, by the Deputy Under Secretary of Defense for Security Policy. In January 1992, however in an attempt to strengthen oversight and control over DOD's special access programs, the Deputy Secretary of Defense required that all special access programs be approved and revalidated on a yearly basis by the Secretary or the Deputy Secretary of Defense personally.

This approval process includes a review and authorization of the program security plan. One of the effects of this policy has been to ensure that the provisions of annex B of DCID 1/14 are utilized as the baseline requirement for special access program administrative due process appeals.

Within the past several years, the Department has also increased oversight of the management of special access programs to include the implementation of DOD security policies as they apply to security programs administered for both Government and industry. The Office of the Deputy Under Secretary of Defense for Security Policy conducts numerous oversight visits of Government and industrial facilities each year. We have a detailed methodology for doing that. We do that on the basis of the priority of visits and activities to

be visited, an activity's level of special access program involvement, and particularly organizations with identified problem areas.

When we do that oversight, we do a thorough review of all the program activity. That includes, of course, the approved security plans, the administrative due process, and the appeals procedures that they are using.

I think that increased oversight has significantly improved the efficiency and effectiveness and security of those programs. Beginning in late 1992 we increased that oversight by approximately 50 percent compared to what it had been on an annual basis before. We anticipate the impact of that will be to further improve field implementation of special access program security policies, including how personnel security is managed both in Government and contractor facilities.

Within the past year I am pleased to tell you both the Air Force and Navy have developed new, improved administrative due process and appeal procedures. The Air Force procedures were implemented in October 1992. The Navy anticipates its procedure to be fully implemented by June 1, 1993.

In summary, Mr. Chairman, we have increased our oversight and control. We have strengthened the approval and revalidation process and we have, I think, stimulated additional improvements in due process and administrative procedures that will be beneficial both to security and to the rights of the individual.

[The prepared statement of Mr. Anderson follows:]

PREPARED STATEMENT OF MAYNARD C. ANDERSON, ASSISTANT DEPUTY
UNDER SECRETARY OF DEFENSE FOR SECURITY POLICY, DEPARTMENT
OF DEFENSE

MR. CHAIRMEN, THANK YOU FOR THE OPPORTUNITY TO APPEAR BEFORE THIS JOINT SESSION OF THE TWO SUBCOMMITTEES TO ADDRESS DEPARTMENT OF DEFENSE POLICY REGARDING THE IMPLEMENTATION OF ADMINISTRATIVE DUE PROCESS AND APPEAL PROCEDURES FOR DOD MILITARY, CIVILIAN, AND CONTRACTOR PERSONNEL WHO HAVE BEEN CONSIDERED FOR OR GRANTED ACCESS TO DOD SPECIAL ACCESS PROGRAM INFORMATION. SPECIFICALLY, I WOULD LIKE TO ADDRESS CHANGES TO OUR PROCEDURE THAT HAVE TAKEN PLACE WITHIN THE PAST THREE YEARS, AS WELL AS SEVERAL ONGOING INITIATIVES DESIGNED TO SATISFY THE DOD'S INTENTION TO PROVIDE FAIR TREATMENT TO INDIVIDUALS TO THE FULLEST EXTENT POSSIBLE, LIMITED ONLY WHEN NECESSARY TO PROTECT CLASSIFIED INFORMATION FROM UNAUTHORIZED DISCLOSURE.

DOD IS COMMITTED TO AFFORDING DUE PROCESS AND APPEAL RIGHTS TO THOSE INDIVIDUALS WHO, FOR WHATEVER REASON, HAVE BEEN DENIED A SECURITY CLEARANCE, OR HAVE HAD A SECURITY CLEARANCE REVOKED. MR. POLLARI, THE ACTING DEPUTY ASSISTANT SECRETARY OF DEFENSE FOR COUNTERINTELLIGENCE AND SECURITY COUNTERMEASURES WILL DISCUSS IN DETAIL THOSE PROCEDURES WHICH APPLY TO THE DOD SECURITY CLEARANCE PROCESS.

IN THAT REGARD, LET ME FIRST DIFFERENTIATE BETWEEN A PERSONNEL SECURITY CLEARANCE DETERMINATION, AND THE GRANTING OF ACCESS TO A SPECIAL ACCESS PROGRAM. A SECURITY CLEARANCE IS AN

ADMINISTRATIVE DETERMINATION THAT AN INDIVIDUAL IS ELIGIBLE FOR ACCESS TO A GIVEN RANGE OR CATEGORY (i.e., TOP SECRET, SECRET, OR CONFIDENTIAL) OF CLASSIFIED INFORMATION. ACCESS TO SPECIAL ACCESS PROGRAM INFORMATION IS GRANTED ONLY WHEN AN INDIVIDUAL IS DETERMINED TO HAVE A NEED-TO-KNOW, AND THEN IS DETERMINED TO BE ELIGIBLE FOR ACCESS ON THE BASIS OF A PARTICULAR PROGRAM'S REQUIREMENTS. WHETHER AN INDIVIDUAL IS BEING CONSIDERED FOR A SECURITY CLEARANCE, OR FOR ACCESS TO INFORMATION PROTECTED BY A SPECIAL ACCESS PROGRAM, THERE IS A BASIC SECURITY STANDARD ON WHICH ALL OF OUR PERSONNEL SECURITY POLICIES ARE PREDICATED:

"THE PERSONNEL SECURITY STANDARD THAT MUST BE APPLIED TO DETERMINE WHETHER A PERSON IS ELIGIBLE FOR ACCESS TO CLASSIFIED INFORMATION OR ASSIGNMENT TO SENSITIVE DUTIES IS WHETHER, BASED ON ALL AVAILABLE INFORMATION, THE PERSON'S LOYALTY, RELIABILITY, AND TRUSTWORTHINESS ARE SUCH THAT ENTRUSTING THE PERSON WITH CLASSIFIED INFORMATION OR ASSIGNING THE PERSON TO SENSITIVE DUTIES IS CLEARLY CONSISTENT WITH THE INTERESTS OF NATIONAL SECURITY." (PARAGRAPH 2-101, DOD 5200.2-R)

THE ESTABLISHMENT OF SPECIAL ACCESS PROGRAMS IS AUTHORIZED BY SECTION 4.2(a) OF EXECUTIVE ORDER 12356, "NATIONAL SECURITY INFORMATION". IN DOD, SPECIAL ACCESS PROGRAMS MAY BE CREATED OR CONTINUED ONLY ON A SPECIFIC SHOWING THAT NORMAL MANAGEMENT AND SAFEGUARDING PROCEDURES ARE NOT SUFFICIENT TO LIMIT NEED-TO-KNOW OR ACCESS, AND THE NUMBER OF PERSONS WHO WILL NEED ACCESS WILL BE

REASONABLY SMALL, COMMENSURATE WITH THE OBJECTIVE OF PROVIDING EXTRA PROTECTION FOR THE INFORMATION INVOLVED. FUNDAMENTAL TO SPECIAL ACCESS PROGRAM MANAGEMENT IS THE USE OF VARIOUS SECURITY ENHANCEMENTS, TO INCLUDE PERSONNEL SECURITY SELECTION AND RETENTION CRITERIA WHICH ARE OFTEN MORE STRINGENT THAN THOSE USED FOR PROGRAMS REQUIRING ACCESS TO CLASSIFIED INFORMATION. SECURITY ENHANCEMENTS ARE DEVELOPED FOR EACH PROGRAM BASED ON ITS SIGNIFICANCE TO THE NATIONAL SECURITY, AND THE PERCEIVED INTELLIGENCE THREAT AGAINST PROGRAM INFORMATION. DEPARTMENT OF DEFENSE ELEMENTS ATTEMPT TO TAKE A COMMON SENSE APPROACH TO GRANTING ACCESS AND PROVIDING A SPECIFIED PROCESS FOR REVIEW AND APPEAL FOR THOSE PROGRAMS WHICH APPLY UPGRADED PERSONNEL SECURITY STANDARDS.

FOR PROGRAMS USING ONLY CLASSIFIED INFORMATION, THE DUE PROCESS AND APPEAL PROCEDURES SET FORTH IN PARAGRAPH 8-201 OF DOD 5200.2-R, "DOD PERSONNEL SECURITY PROGRAM", ARE UTILIZED FOR MILITARY AND CIVILIAN EMPLOYEES OF THE DEPARTMENT WHOSE SECURITY CLEARANCES HAVE BEEN DENIED OR REVOKED. FOR CONTRACTOR EMPLOYEES, THE PROVISIONS OF EXECUTIVE ORDER 10865, "SAFEGUARDING CLASSIFIED INFORMATION WITHIN INDUSTRY", ARE USED AS IMPLEMENTED WITHIN THE DEPARTMENT BY DOD DIRECTIVE 5220.6, "DEFENSE INDUSTRIAL PERSONNEL SECURITY CLEARANCE REVIEW PROGRAM."

SPECIAL ACCESS PROGRAMS ALSO USE THE PROVISIONS OF DOD 5200.2-R, UNLESS AN UPGRADE OF ACCESS CRITERIA HAS BEEN

AUTHORIZED BY THE DEPUTY SECRETARY OR SECRETARY OF DEFENSE, IN WHICH CASE, THE PROVISIONS OF ANNEX B, DIRECTOR OF CENTRAL INTELLIGENCE DIRECTIVE (DCID) 1/14 ARE OFTEN USED AS THE BASELINE REQUIREMENT. THE REQUIREMENTS OF DCID 1/14 ARE USED BECAUSE SPECIAL ACCESS PROGRAM SECURITY MEASURES ARE USUALLY QUITE SIMILAR TO THOSE APPLIED TO INTELLIGENCE PROGRAMS.

A COMPARISON OF THE ADMINISTRATIVE DUE PROCESS AND APPEAL PROVISIONS OF DCID 1/14 TO DOD 5200.2-R REVEAL SOME DIFFERENCES: FIRST, THE DCID 1/14 PROVISIONS REQUIRE THAT INDIVIDUALS BE NOTIFIED OF THE DENIAL OR REVOCATION SUBSEQUENT TO THE ACTION BEING TAKEN, WHILE THE DOD 5200.2-R REQUIRES THAT THE INDIVIDUAL BE NOTIFIED BEFORE THE DENIAL OR REVOCATION IS TO TAKE PLACE. THE SECOND DISTINCTION IS THAT WHILE BOTH DOD 5200.2-R AND DCID 1/14 INCLUDE PROVISIONS TO ENSURE THAT THE APPLICANT IS PROVIDED REASONS FOR THE DENIAL OR REVOCATION, UNDER THE DCID PROCEDURES, THE INDIVIDUAL MUST FIRST REQUEST THAT THE REASONS BE PROVIDED. BOTH THE DOD 5200.2-R AND THE DCID 1/14 PROVIDE AN EXEMPTION FROM THE REQUIRED APPEAL PROCEDURES IF THEIR APPLICATION WOULD BE INCONSISTENT WITH NATIONAL SECURITY.

SPECIAL ACCESS PROGRAM SECURITY ENHANCEMENTS, TO INCLUDE THE USE OF DCID 1/14 ACCESS CRITERIA WHEN NECESSARY, ARE ESTABLISHED AS PART OF THE PROGRAM'S OVERALL SECURITY PROCEDURES. PRIOR TO 1992, SUCH PROCEDURES WERE APPROVED BY THE SECRETARY OF THE MILITARY DEPARTMENT INVOLVED, OR FOR OTHER DOD COMPONENTS, BY THE

DEPUTY UNDER SECRETARY OF DEFENSE FOR SECURITY POLICY. IN JANUARY, 1992, IN AN EFFORT TO STRENGTHEN OVERSIGHT AND CONTROL OVER DOD SPECIAL ACCESS PROGRAMS, THE DEPUTY SECRETARY OF DEFENSE REQUIRED THAT ALL SPECIAL ACCESS PROGRAMS BE APPROVED AND REVALIDATED ON A YEARLY BASIS BY THE SECRETARY OR DEPUTY SECRETARY OF DEFENSE. THIS APPROVAL PROCESS INCLUDES A REVIEW AND AUTHORIZATION OF THE PROGRAM SECURITY PLAN.

THE EFFECT OF THIS POLICY HAS BEEN TO ENSURE THAT THE PROVISIONS OF ANNEX B, DCID 1/14 ARE UTILIZED AS THE BASELINE REQUIREMENT FOR SPECIAL ACCESS PROGRAM ADMINISTRATIVE DUE PROCESS AND APPEALS. FURTHER, DOD COMPONENTS ARE ALLOWED TO INVOKE THE NATIONAL SECURITY EXEMPTION PERMITTED BY DCID 1/14 ONLY IF AUTHORIZED AT THE HIGHEST LEVELS OF THE DEPARTMENT.

WITHIN THE PAST SEVERAL YEARS, THE DEPARTMENT OF DEFENSE HAS ALSO ATTEMPTED TO INCREASE OVERSIGHT OF THE MANAGEMENT OF SPECIAL ACCESS PROGRAMS, TO INCLUDE THE IMPLEMENTATION OF DOD SECURITY POLICIES AS THEY APPLY TO PROGRAMS ADMINISTERED FOR BOTH GOVERNMENT AND INDUSTRY. THE OFFICE OF THE DEPUTY UNDER SECRETARY OF DEFENSE FOR SECURITY POLICY CONDUCTS NUMEROUS OVERSIGHT VISITS OF GOVERNMENT AND INDUSTRIAL FACILITIES INVOLVED WITH SPECIAL ACCESS PROGRAMS EACH YEAR. A DETAILED METHODOLOGY HAS BEEN DEVELOPED TO DETERMINE THE PRIORITY OF OVERSIGHT VISITS, ACTIVITIES TO BE VISITED, AN ACTIVITY'S LEVEL OF SPECIAL ACCESS PROGRAM INVOLVEMENT, AND THOSE ORGANIZATIONS WITH IDENTIFIED

PROBLEM AREAS.

WHEN VISITING SPECIAL ACCESS PROGRAM ACTIVITIES, A THOROUGH REVIEW OF ALL PROGRAM ACTIVITY IS CONDUCTED. ACTIVITIES ARE REVIEWED TO ENSURE COMPLIANCE WITH THEIR APPROVED SECURITY PLANS, ADMINISTRATIVE DUE PROCESS, AND THE APPEALS PROCEDURES IN USE. THIS INCREASED OVERSIGHT HAS, IN OUR VIEW, SIGNIFICANTLY IMPROVED THE EFFICIENCY, EFFECTIVENESS, AND SECURITY OF DOD SPECIAL ACCESS PROGRAMS. BEGINNING IN LATE 1992, OVERSIGHT OF SPECIAL ACCESS PROGRAMS CONDUCTED BY THE OFFICE OF THE DEPUTY UNDER SECRETARY OF DEFENSE FOR SECURITY POLICY, WAS INCREASED BY APPROXIMATELY 50% COMPARED TO 1992. WE ANTICIPATE THAT THE LONG TERM IMPACT OF THIS INCREASED OVERSIGHT EFFORT WILL BE TO FURTHER IMPROVE THE FIELD IMPLEMENTATION OF ALL SPECIAL ACCESS PROGRAM SECURITY POLICIES, INCLUDING HOW PERSONNEL SECURITY IS MANAGED IN GOVERNMENT AND CONTRACTOR FACILITIES.

WITHIN THE PAST YEAR BOTH THE AIR FORCE AND THE NAVY HAVE DEVELOPED NEW, IMPROVED ADMINISTRATIVE DUE PROCESS AND APPEAL PROCEDURES. THE AIR FORCE PROCEDURES WERE IMPLEMENTED IN OCTOBER 1992. THE NAVY ANTICIPATES ITS PROCEDURE TO BE FULLY IMPLEMENTED BY JUNE 1, 1993.

IN SUMMARY, OVERSIGHT AND CONTROL OF SPECIAL ACCESS PROGRAMS HAVE BEEN STRENGTHENED BY ELEVATING THE APPROVAL AUTHORITY TO THE DEPARTMENT'S HIGHEST LEVELS, WITH EVERY DOD SPECIAL ACCESS

PROGRAM NOW REQUIRING APPROVAL BY EITHER THE SECRETARY OR DEPUTY SECRETARY OF DEFENSE. THE INCREASED OVERSIGHT VISITS TO SPECIAL ACCESS PROGRAM INSTALLATIONS AND FACILITIES HAVE PROVIDED EDUCATION TO MANAGERS IN THE FIELD, AND SERVED AS A DETERRENT TO ANYONE TRYING TO CIRCUMVENT PRESCRIBED PROCEDURES.

AS THE SUBCOMMITTEES ARE AWARE, ESPIONAGE OVER THE PAST SEVERAL YEARS HAS DONE SIGNIFICANT DAMAGE TO OUR NATION'S SECURITY. OUR PROCEDURES FOR ACCESS TO SPECIAL ACCESS PROGRAMS HELP MINIMIZE THE PROBABILITY OF SUCCESSFUL ESPIONAGE DIRECTED AGAINST INFORMATION OF GREAT VALUE TO THE NATION. FOR THIS REASON, ACCESSES ARE DENIED OR REVOKED IN CASES WHERE THE INDIVIDUALS SEEM TO BE POTENTIAL CANDIDATES FOR RECRUITMENT BY FOREIGN INTELLIGENCE ORGANIZATIONS, OR WHOSE BEHAVIOR DOES NOT DEMONSTRATE THE STANDARDS FOR TRUSTWORTHINESS AND RELIABILITY NECESSARY TO PROTECT THE NATION'S MOST SENSITIVE INFORMATION.

THE ADMINISTRATIVE DUE PROCESS AND APPEAL PROCEDURES FOR DOD SPECIAL ACCESS PROGRAMS CONTINUE TO BE IMPROVED, ALONG WITH OTHER AREAS OF DOD SECURITY. THOSE IMPROVEMENTS ARE ALWAYS AIDED BY RECOMMENDATIONS RECEIVED FROM INTERESTED PARTIES LIKE THE GENERAL ACCOUNTING OFFICE, AND YOUR SUBCOMMITTEES.

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE, I AND THE MEMBERS OF MY STAFF WILL WORK WITH YOU IN ANY WAY WE CAN TO ENSURE THAT SPECIAL ACCESS PROGRAM ACCESS DECISIONS CONTINUE TO BE REASONABLE, AND CHARACTERIZED BY A FAIR ADMINISTRATIVE PROCESS PROCEDURE. I WILL BE PLEASED TO RESPOND TO ANY QUESTIONS YOU MAY HAVE.

Mr. McCLOSKEY. Thank you very much, gentlemen.

Mr. Chairman.

Mr. EDWARDS. Mr. Anderson, you said that the due process can be waived if it is determined there is an issue of sensitive national security; is that correct?

Mr. ANDERSON. Yes, sir.

Mr. EDWARDS. That sounds like a loophole to me unless there is due process in that, too.

Mr. ANDERSON. I am not sure I would categorize it as a loophole, Mr. Chairman. I think the decision to do that is on a very sound basis and the conditions under which that can be done were outlined in annex 1 of DCID 1/14.

Mr. EDWARDS. Not used very much?

Mr. ANDERSON. Not used very much. It would be in cases where actions would reveal a covert source or reveal a particular U.S. Government affiliation with industry that is classified and not otherwise protectable or where the senior officer of the intelligence community determines in writing that an appeal cannot be offered consistent with national security.

Those are the basic standards and not used very much.

Mr. EDWARDS. Those are no doubt very good standards. Quite generally, the Department of Defense and the State Department it seems to me have improved considerably, but wouldn't you all agree you all have a way to go?

Mr. ANDERSON. It is a slow process, Mr. Chairman. We are doing it step by step. We have some way to go. I am not quite as pessimistic as the GAO witness concerning where we will be in the new programs. I think we are moving toward more unified standards and application of standards more across-the-board perhaps than we have been for many years.

Mr. EDWARDS. Would you say generally that you are moving toward a system where someone can be satisfied that they would, when a security clearance is going to be denied or a tentative decision has been made, that it will not be made until the person has an opportunity for some hearing or some due process procedure whereby he or she will be notified of the nature of the charge and given some kind of an opportunity to respond?

Mr. ANDERSON. In the Department of Defense, it is already almost at the point where the individual has the right to present reasons why a decision to deny or revoke should not be upheld and appeal the second level review; and I think we are at that point already.

Mr. QUANTON. If I might add a comment from the Department of State's perspective, I think we have, indeed, as in the case of the Department of Defense, made good progress. The challenge for administrative due process is to assure expeditious handling of cases, not the cases themselves. These cases are often extraordinarily complex. Clearly, they impact on the lives of our employees, particularly those when there has been a suspension before a decision of revocation has been made.

Obviously, we put continuing effort to make sure that we carry out this process of investigation and the appeals steps which are within our control and not within the control of the employee as expeditiously as possible. We want to resolve these issues in the

employee's interest as well as our own. That is the real challenge, I think, to move the process as quickly as we can to assure the administrative due process.

Mr. MCCLOSKEY. Thank you, Mr. Quainton. It is a pleasure to recognize Mr. Coble. Howard, do you have a statement or questions?

Mr. COBLE. Gentlemen, good to have you all here. Gentlemen, I can appreciate the fact that each agency enjoys a certain amount of independence and "I will do it my way; you do it your way."

Having said that, do you all think there should be a single uniform notice and appeal procedure for adverse action cases arising from a denial or revocation of a security clearance in all Government agencies? I am not suggesting that there should be or that there shouldn't be. I would be interested to hear what you all think.

Mr. ANDERSON. Well, Mr. Coble, I will answer first. I think it would be of some assistance if we had a standard procedure that would operate across-the-board. There are circumstances obviously in the intelligence community where it is not as easy to do that sometimes as it is in the civilian agencies, just simply because of the involvement of certain kinds of sensitive information.

In the Department of Defense, in almost every circumstance, I think it is possible to have that kind of process and that kind of procedure; and we, in fact, have been taking small steps toward that end over the last few years.

Mr. QUANTON. I am trying to think what I would add to that. It is a very complex issue. Clearly it is important that there be consistent standards in the U.S. Government for handling the security process and the security clearance review process.

My only concern would be that agencies do differ. They differ in their national security requirements, their procedures. If we were to go down that road, there might be a new complex bureaucratic process which would slow down our ability to deal with cases in ways that would be prejudicial to our employees. Good standards, I think, absolutely we would welcome that could be—that would be consistent with what other agencies do.

Mr. POLLARI. I think it is important to meet a standard of due process for everybody. If we get into a position where we are defining additional requirements that some agencies don't feel are needed, that go beyond what would give each person due process, I personally would not be in favor of that kind of legislation, but I do believe we have to meet a basic standard of fairness to the person because their livelihood depends upon that.

Mr. EDWARDS. Will the gentleman yield? It was a good question, Mr. Coble. But didn't the Bush administration propose that you draft for the Department of Defense a new Executive order on security clearances? Did that draft ever get written?

Mr. POLLARI. Was that NSD-84? If you are referring to that, there was an effort, I believe, to draft that, but it did not reach fruition. It was a Governmentwide effort.

Mr. COBLE. Gentlemen, as you all point out, I can certainly think of convincing arguments for uniformity. I can also recognize the fact that from time to time there may be a requirement for exceptions.

Mr. Chairman, in closing, I would like to say I can appreciate the fact that assuming I apply for a security clearance and am rejected, I am going to conclude it was done capriciously, arbitrarily, and I was not given a fair shake.

I don't want to see us get into a situation where we will have a 5-year period of adverse litigation dragging on and on and on. The other side of that coin is, though, I think we need to make it clear that a security clearance in my opinion is not a right; it is—not unlike a vehicle operator's license. It is a privilege. I think some sort of balance has to be struck. That would be something I would say.

Thank you, Mr. Chairman.

Mr. EDWARDS. Will you yield a minute?

On that question, Mr. Coble, insofar as the State Department is concerned, the GAO said that there were cases lasting years. What is the oldest case you have at the State Department right now where a decision has not been arrived at?

Mr. QUANTON. There is a case, I am told, that may be as much as 5 years old. One of the problems that we have encountered in the past is simultaneously an employee may have a procedure in grievance channels which is quite separate with regard to that employee's employment rights in the Department. That process, which has many, many appeals provisions may take many years to complete, unfortunately. We have, in those cases in the past, held off making a final determination on security issues until the personnel grievance—

Mr. EDWARDS. Forgive me. I thought I was needed downstairs. I am sorry.

Mr. QUANTON. And we did not take final security decisions until the personnel grievance issues were previously resolved. This was about the employment of an individual.

We believe that that perhaps could be revisited to see whether we might not take security decisions in parallel with a grievance process. These are very complex issues.

I would say that last year with over 1,300 security clearances reviewed in the Department of State, there were 14 suspensions; and of those 14 last year, only 5 are still pending final resolution. If you were to look over the 6 years since the appeals procedures are in place in the Department of State, only 11 cases have gone to the final appeals panel at all by the employees; and of those, 9 of the security procedures, security decision was upheld, 2 were revoked. There are not a lot of cases. There have been cases in the past which are of longstanding. We are trying very hard to reduce that time. I would say that is not a problem at the moment.

Mr. COBLE. Thank you, Mr. Chairman.

Mr. MCCLOSKEY. What do you mean by reviewed? 1,300 reviewed? What typically happened in those reviews?

Mr. QUANTON. We update the security clearances on all our employees on a regular 5-year basis. After you are granted a clearance by the Department of State to perform classified duties in the Department, we obviously don't just close the books and say for the next 30 years of your employment, we will not do anything. This is a review of people's security clearance, existing clearances, not of—

Mr. McCLOSKEY. I understand. That is routine stuff, part of being there. How many adverse reviews are initiated in a year?

Mr. QUANTON. In that process, there were 14. There were 1,380 investigations of current employees; 14 suspensions; is that correct?

Now there is a second process which is the preemployment; that is, you wish to become an employee of the Department of State, you must get a security clearance. That is handled differently.

Mr. McCLOSKEY. In the interests of time, I will try to be brief with two or three questions. Maybe I would have more submitted for the record for you to answer.

I understand that State does not agree with the GAO recommendation of an independent appeal. Is it not the case that some of the people who made that initial adverse determination can be involved in the appeal process at State? Can you comment on that?

Mr. QUANTON. Yes, I can, Mr. Chairman. Indeed, I mentioned that perhaps too elliptically in my introductory remarks. In the 8 months I have been on that job, I have been very carefully shielded from any involvement, direct involvement in the internal appeals process and that review of security clearances. However, I do sit, as the GAO observed, on that final review panel with the Under Secretary for Management and the Director General of the Foreign Service.

Having looked at that issue in the light of the GAO's recommendations, we are prepared to make some changes in that procedure to take me out of that appeals process in the way that it now is because of that appearance—I think not that practice, because of the insulation which that Assistant Secretary has enjoyed in the past, but the appearance there might be some conflict of interest because he is the senior official supervising the investigative process in his own department.

So we are going to make some changes, Mr. Chairman.

The other recommendations of the GAO, of course, we have accepted and implemented.

Mr. McCLOSKEY. To the DOD, is there any reason to have different administrative due process standards for contractor employees vis-a-vis civil service employees?

Mr. POLLARI. Historically, there was a court case that led into the Executive Order 10,865. That is the primary reason for it. We have looked at this—the study I mentioned earlier has looked at how the agencies process. In giving the hearing part to the contractors, actually the review process results in sustaining the initial determination to deny or revoke more than in the other place where as we do not have the hearings.

We found that to be a fairly interesting development, that when you add the hearing into that process, you had more cases in which you confirm the initial decision to deny or revoke. That was surprising.

Interesting figures overall, about half of the people who got to that point where they were advised that their clearance would be denied or revoked, they did not challenge that.

Then the other half that did, about 40 percent of those were turned over; this is all in DOD not just industrial. I think what that shows is that the initial decision, you know, is not capricious.

Second, the review process does result in a significant number of changes; and that is like 20 percent from where it started; and surprisingly, that sometimes where you have more administrative due process, you do not have decisions that go for the original—that don't favor the individual that much.

Mr. McCLOSKEY. The Army has a different standard for SCI procedures than the Air Force and Navy. Particularly, there is more of a right of notification within the Army process. Could you comment on that? You have at least indirectly stated that you are working on a comprehensive and uniform DOD standard; is that right?

Mr. POLLARI. That's right. The Army and DIA when they adjudicate an SCI access, use the procedures in 5200.2-R. They do give notification at the beginning. The DCI directive does not mandate that. So in the other components that do not do that, they are following that procedural due process, but they are not giving the broader due process, which the Army and now DIA give in those cases.

Mr. McCLOSKEY. Is that going to happen?

Mr. POLLARI. One thing I probably should have mentioned in the initial remarks is that the Deputy Secretary of Defense has directed a consolidation of DOD adjudicative facilities. We have currently 18 of those for the services and defense agencies and Joint Chiefs of Staff. That has been reduced down, by the end of 1994 will be reduced to 8 instead of 18.

In the Air Force and the Navy, they are going to combine the adjudicative facilities for SCI and collateral clearances. So each service can have one adjudicative facility. I would expect at that point that procedures similar to what the Army is doing probably will be applied; but that is in the future.

I see it going in that direction.

Mr. McCLOSKEY. Thank you, gentlemen.

Mr. Chairman.

Mr. EDWARDS. I have no further questions.

Mr. McCLOSKEY. Thank you, gentlemen. We will be sending you additional questions.

Mr. ANDERSON. Thank you.

Mr. McCLOSKEY. The next panel now is Beth Moten, legislative director, American Federation of Government Employees; Joshua Bowers, staff director, National Federation of Federal Employees; Maureen Gilman, legislative director, National Treasury Employees Union; and Joseph Melrose, vice president of the American Foreign Service Association.

I welcome this distinguished panel. I would say that all of your statements are accepted for the record. If you could prioritize them and highlight your statements within the 5-minute time period, it would be very helpful.

Perhaps we can start off by recognizing Ms. Moten.

**STATEMENT OF BETH MOTEN, LEGISLATIVE DIRECTOR,
AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES,
AFL-CIO**

Ms. MOTEN. Good morning. I appreciate the opportunity to be here. My name is Beth Moten. I am legislative director of the

American Federation of Government Employees, AFL-CIO. We represent many of the employees who occupy positions in the several dozen departments and agencies which require personnel to hold a security clearance.

It is obvious that the refusal to grant clearances can have devastating ramifications. If a legitimate determination is made that an individual is a security risk, the ramifications might be deemed just consequences. But if because of a clerical error, a malicious accusation, an unsubstantiated allegation, an investigator's own moral or religious bias, an individual were to be denied or were to lose a security clearance, his career could be at an end. We contend that it would not be very likely for such an individual to obtain other employment.

Over the years, case after case has arisen where an employee or applicant for employment has been denied a security clearance or had a security clearance revoked and then lost his job. In many of the cases, little explanation was given and the victims were afforded little, if any, opportunity to refute the record. This raises a threshold issue of whether or not such issues are constitutional.

Federal employees only have those employment rights set forth in title 5 of the U.S. Code. Essentially, any employee removed for cause has the right to appeal to the Merit Systems Protection Board, but any employee suspended on national security grounds is not entitled to appeal to the Board. Rather he is entitled only to specified preremoval procedural rights including a hearing by the agency which suspended him. This is hardly an impartial tribunal.

The number of positions in the Federal Government which require the incumbent to hold a security clearance continues to increase. Thus far, more employees are exposed to the potential threat of losing their jobs due to a purely subjective denial of the security clearance than ever before. This fact, coupled with the Supreme Court's clear finding that in the absence of an explicit statutory provision, there is no authority to review the underlying reasons behind the denial of a clearance, mandates immediate congressional action.

AFGE believes that certain due process protections can and should be afforded to employees without in any way infringing upon the constitutional investment of power given to the President to serve as Commander in Chief and the inherent authority with that power to protect national security information. What is needed is statutory language giving certain due process rights to employees which are balanced against the Government's interests in national security.

AFGE urges the committees to move forward to take whatever action is necessary to ensure that employees have at a minimum a detailed written explanation of the basis for the decision; a reasonable opportunity to reply, submit additional information, confront persons making statements adverse to the individual, be represented by counsel or other representative of his or her choosing; written notice of the results of the review and the identity of the deciding official; and an opportunity to review an adverse decision before an impartial tribunal.

Thank you very much.

[The prepared statement of Mr. Sturdivant follows:]

PREPARED STATEMENT OF JOHN N. STURDIVANT, NATIONAL PRESIDENT, AMERICAN
FEDERATION OF GOVERNMENT EMPLOYEES, AFL-CIO

Mr. Chairman, and members of the Subcommittees: My name is John N. Sturdivant. I am President of the American Federation of Government Employees, AFL-CIO, the largest union representing Federal employees. AFGE represents many of the employees who occupy positions in the several dozen Departments and Agencies which require personnel to hold a security clearance. Thus, we are pleased to have this opportunity to present our views at this hearing on the issue of due process protections for those Federal employees whose security clearances have been denied or revoked.

Our statement in 1989 on the proposed Executive Order governing access to classified information pointed out that the subjectiveness of the eligibility criteria and the vagueness of the evidence needed for a security clearance determination highlighted how imperative it is that persons affected by such determinations be guaranteed meaningful due process rights. Nothing has changed since that time. Meaningful due process rights are still lacking for those employees who lose or are denied security clearances.

It is obvious that the refusal to grant or the revocation of a security clearance can have devastating ramifications. If a legitimate determination is made that an individual is a security risk, the ramifications might be deemed just consequences. But, if because of a clerical error, a malicious accusation, an unsubstantiated allegation, an investigator's own moral or religious bias etc., an individual were to be denied or were to lose a security clearance, his career could be at an end. How likely would it be for such an individual to obtain other employment?

Over the years, case after case has arisen where an employee or an applicant for employment has been either denied a security clearance or had a security clearance revoked and then lost his job. In many of the cases, little explanation was given and the victims were afforded little if any opportunity to refute the record. This raises the threshold issue of whether or not such actions are constitutional.

Employees have a property interest in their jobs which the Supreme Court has indicated is protected under the Fifth Amendment to the constitution of the United States. (*Perry v. Sindermann*, 408 U.S. 593 (1972)). In *Perry*, the court held that officials were obligated to grant an employee a hearing at his request, where he would be *informed of the grounds* for his non-retention and be provided an opportunity to *challenge their sufficiency*. In other words, where there is a property interest involved, an individual is constitutionally entitled to certain minimal due process rights.

But, *Perry* and other similar cases did not involve an issue of national security. While there have been several cases touching on this area, the precise issue of due process entitlements in security clearance cases has not been determined by the Courts. Where Congress has not specifically provided otherwise, the Courts have simply been reluctant to intrude upon the authority of the Executive Branch in military and national security affairs. Essentially the Courts have held that, "with respect to employees in sensitive positions there is a reasonable basis for the view that an agency head who must bear the responsibility for the protection of classified information committed to his custody, should have the final say in deciding whether to repose his trust in an employee who has access to such information." *Department of the Navy v. Egan*, 108 S. Ct. 818 (1988). Stated very generally, the Courts have determined that the rationale behind the grant or denial of a security clearance rests with the Executive Branch. Notwithstanding this, the fact is that the Courts have in no way denied that employees should be entitled to at least minimal due process rights. What they have done is to recognize that those rights may be somewhat limited but they have recognized those rights.

Federal employees have only those employment rights set forth in Title 5 of the United States Code. Essentially, any employee removed for cause has the right to appeal to the Merit Systems Protection Board but any employee suspended on national security grounds is not entitled to appeal to the Board. Rather he is entitled only to specified preremoval procedural rights, including a hearing by the very agency which suspended him; hardly an impartial tribunal.

Even in those instances where an employee is removed for cause and where the underlying reason is the denial or revocation of a security clearance, the Supreme Court has indicated that the MSPB lacks statutory authority to review the reasons underlying an agency's security clearance determination. Instead, the Board's authority is limited to ensuring that the employee was afforded at least minimal due process protections. See *Egan*, *supra*.

Since the *Egan* decision, the MSPB has decided several cases.¹ In each case, it has cited *Egan* for the proposition that it has no authority to review the underlying reasons for a security clearance denial and that its jurisdiction is limited solely to determining whether the employing agency has met its obligation to afford the affected employee with at least minimal due process protections including advance notice and an opportunity to respond. In addition, the MSPB has indicated that the Agency has an obligation to show as part of its case in chief that it considered the appellant for appointment to a nonsensitive position which did not require a security clearance.²

The numbers of positions in the Federal Government which require the incumbent to hold a security clearance continues to increase. Thus, far more employees are exposed to the potential threat of losing their jobs due to a purely subjective denial of a security clearance than ever before. This fact coupled with the Supreme Court's clear finding that in the absence of an explicit statutory provision, there is no authority to review the underlying reasons behind the denial of a clearance, mandates immediate Congressional action.

It is AFGE's contention that certain due process protections can and should be afforded to employees without in any way infringing upon the constitutional investment of power given to the President to serve as Commander in Chief and the inherent authority with that power to protect national security information. What is needed is statutory language giving certain due process rights to employees which are balanced against the Government's interests of national security.

At a minimum, every employee should be fully informed of the reasons for the denial of his security clearance. He should be able to obtain a written statement of the reasons upon request and within a reasonably short time period. We know of not a single instance where the United States was placed in jeopardy by informing the employee of the grounds for denial.

An employee should be entitled to refute the reasons for the denial or revocation and to a hearing on the record before an impartial tribunal. Contrary to often expressed opinion, only in a very few cases would it be unreasonable for an outside nonexpert body to review the substance of a security clearance denial determination. Those few cases would primarily be those involving espionage or treasonous activities. In the majority of cases, the denial or revocation is based upon conduct such as alcohol or substance abuse, sexual affairs, homosexuality, etc. In such cases, an impartial body which was not necessarily versed in the agency's mission as it relates to national security could be charged with the responsibility for determining what constitutes an acceptable margin of error in assessing the potential risk or in balancing the right of an employee to his job versus the government's national security interests. Further, in presenting the case before such a tribunal, no classified information would need to be discussed. Rather, the hearing would be limited to the alleged facts giving rise to the revocation or denial balanced against a statement of the duties of the employee's position.

In those instances where espionage or treason forms the basis for the revocation or denial, the employee should still be informed of the reasons for the denial and given the opportunity to refute the allegations. The only difference between these types of cases and those mentioned above is that the hearing tribunal should perhaps be comprised of those with the necessary understanding of the Agency's mission and expertise in protecting classified information.

In those instances where the allegations are true but where there is no nexus between the alleged facts forming the basis for the adverse decision and the possibility for a breach of national security then the security clearance should be restored. In areas where the relationship is nebulous, the Agency must have an obligation to offer the employee any available nonsensitive position.

These are what we believe to be the minimal protections which must be available through statutory provisions to employees who are denied a security clearance or whose clearance is revoked. We have already seen that a Fifth Amendment denial of due process challenge raised by an employee affected by an adverse security clearance determination would probably fail. The Court would simply state that since the Executive Branch is constitutionally cloaked with authority to act to protect national security, it can take such actions as it deems appropriate notwithstanding the absence of any meaningful procedural due process guarantees. If on the other hand, the Congress took action to provide certain due process rights, such would probably pass constitutional muster. Matters of foreign relations and national

¹ *Weissberger v. U.S. Information Agency*, 88 FMSR 5491; *Woroneski v. Department of the Navy*, 88 FMSR 5490; *Vegotsky v. Department of the Navy*, 88 FMSR 5492.

² *Armstrong v. Department of Defense*, 88 FMSR 5493.

security policy are not exclusively within the realm of the Executive Branch—Congress has considerable powers in these areas. So, in conclusion, we urge the Committees to move forward to take whatever action is necessary to insure that employees have, at a minimum:

- a detailed written explanation of the basis for the decision,
 - a reasonable opportunity to reply, submit additional information, confront persons making statements adverse to the individual, be represented by counsel or other representative of his/her choosing,
 - written notice of the results of the review and the identity of the deciding official, and
 - an opportunity to review an adverse decision before an impartial tribunal.
- Thank you for this opportunity to present our views on this vital issue.
I will be happy to respond to any questions which you may have.

STATEMENT OF MAUREEN GILMAN, LEGISLATIVE DIRECTOR, NATIONAL TREASURY EMPLOYEES UNION

Ms. GILMAN. Mr. Chairman, I am Maureen Gilman, legislative director for the National Treasury Employees Union.

Thank you for the opportunity to offer our views on due process in the denial or revocation of security clearances. NTEU represents 150,000 employees working in various agencies of the Federal Government, including the Department of Energy, the Nuclear Regulatory Commission, and the U.S. Customs Service. Many of our members working in these agencies are required as a condition of employment to obtain security clearances.

The denial or revocation of the security clearance is in many instances a career-ending action. Years of service and experience can be suddenly laid to waste as an employee is removed from the Federal service in the wake of a clearance revocation. It can be the career equivalent of the death sentence. Due to the unique nature of some Government programs requiring security clearances, there is no comparable private or public sector career available as a alternative. In instances where there are private employment alternatives, the private employee is often a Government contractor requiring the same security clearances.

At present, there is no meaningful recourse for an employee unfairly or arbitrarily denied a security clearance. We believe the money spent in suitability determinations must be focused and targeted on the narrow issue of genuine threats to the national security and the job-related functions of the Federal service.

No measure of reform in the current system, however, can be effective without a mechanism for a check on management action.

The necessity of an appeals process for adverse personnel actions is a well-recognized and longstanding component of the merit system. The majority of Federal employees are afforded protection of appeal through the Merit Systems Protection Board or through a labor-management grievance procedure.

Removal or other adverse action resulting from the revocation of a security clearance remains as a gap in our civil service system—a system that is to ensure that “management acts for the right reasons.”

At present, 5 U.S.C. 7532 provides for suspension and subsequent removal of an employee for “national security” reasons without benefit of appeal to the MSPB. Employees are afforded the opportunity to seek review of the action before a three-person panel of “disinterested parties” selected by agency management. OPM maintains a roster of individuals to be utilized for this purpose.

The findings of the panel are advisory and final disposition is left to the discretion of the agency head.

Removal for cause is provided for in 5 U.S.C. 7513. Employees so removed have the right of appeal to the MSBP. In some instances, agencies are not covered under 7513, and have other statutory or regulatory-based procedures for the removal of employees.

In *Carlucci v. Doe*, 109 S. Ct. 407 (1988), the Supreme Court held that 7532 procedures are not "exclusive or mandatory" for removals based on the denial of a security clearance. Agencies can take action to remove an employee under 7513 or any other available employee removal procedure provided for under law or regulation, even though such removal is clearly grounded in national security considerations.

Therefore, an employee can be denied the protections of 7532, insofar as they are protections, by management simply choosing to initiate action under another procedure.

In a related case, the Supreme Court held that removal for cause, based on national security consideration, taken under 7513 is not reviewable on the merits by the MSPB. Only procedural questions were subject to the scrutiny of the MSPB.

There must be a single, uniform appeal procedure for adverse action cases arising from the denial or revocation of security clearances. That procedure must provide an impartial review based on the substance of the action, and authority to order appropriate remedies.

We have made some specific suggestions in our written testimony as to how this could be achieved without compromising national security. We hope those suggestions will be given consideration by the committees. Thank you again for the opportunity to present our views. I would be happy to answer any questions you may have.

[The prepared statement of Mr. Tobias follows:]

PREPARED STATEMENT OF ROBERT M. TOBIAS, NATIONAL PRESIDENT, NATIONAL TREASURY EMPLOYEES UNION

On behalf of the members and officers of NTEU, I would like to express appreciation to the Chairmen for the opportunity to offer our views before this joint hearing on due process and the denial or revocation of security clearances. NTEU represents 150,000 employees working in various agencies of the federal government, including the Department of Energy, the Nuclear Regulatory Commission, and the U.S. Customs Service. Many of our members working in these agencies are required as a condition of employment to obtain security clearances.

The denial or revocation of a security clearance is, in many instances, a career ending action. Years of service and experience can be suddenly laid to waste as an employee is removed from the federal service in the wake of a clearance revocation. It can be the career equivalent of the death sentence. Due to the unique nature of some government programs requiring security clearances, there is no comparable private or public sector career available as an alternative. In instances where there are private employment alternatives, the private employer is often a government contractor requiring the same security clearances.

In any instance, the denial or revocation of a security clearance too frequently casts a shadow not only on the professional and personal attributes of the employee, but also on the employee's essential character and loyalty to the country.

No one is more acutely aware of the genuine need to protect the security of the nation than those employees who work each day in the service of their country. Indeed, it is the very importance of the issue that demands a system of checks and balances to ensure that national security is, in fact, the object of the security clearance process.

At present, there is no effective check to prevent a self-serving management from perverting the security clearance process for personal or political interests. At

present, there is no meaningful recourse for an employee unfairly and arbitrarily denied a security clearance. At present, there is no assurance for the public that the security clearance process actually protects the vital interests of the country.

Employees are not the only victims in arbitrary and unfair denials of security clearances. The national security itself is compromised. Resources and efforts that should be properly deployed in the national interest are misappropriated and misdirected. The skills and talents of dedicated employees are forever lost to the nation while actual threats to the national security can remain undetected.

The abuses connected with the arbitrary denial of security clearances are compounded by the common practice of "overranking." Like grade inflation in our schools, "sensitivity inflation" has overtaken our personnel system. All too often, a position is designated as a "national security position" without an adequate examination of the actual duties of the position. Employees holding those positions are then required to fill out intrusive background questionnaires in the investigation of their "suitability." Where their background investigation reveals minor infractions, they are subject to dismissal without adequate due process.

The current system does not serve the national interest, rather, it subverts national security through the misdirection of resources and the needless demoralization of the work force. It is a bitter irony to federal employees that jobs not deemed important enough to warrant adequate pay or benefits are somehow crucial enough to justify the widespread disregard of basic Constitutional rights.

It is time to wade through the murky swamp of suitability and security clearance determinations, and bring clarity to the process as well as checks on potential misdirection and abuse.

We must have reasonable and clear standards to stop over-ranking and misclassification of jobs and programs. There must be an end to the confusion between an important and responsible job, and a job that involves national security. As the Supreme Court noted in 1956, national security must not be construed "in a sense so broad as to be involved in *all* activities of Government, for then the relationship to the 'national security' would follow from the very fact of employment." (*Cole v. Young*, 351 U.S. 536, 546 (1956)). The Court's caution on national security is equally applicable to overreaching suitability criteria.

We must firmly establish that having a job of any consequence in fulfilling the mission of any agency is not an excuse to intrude into the personal life of an employee. Information required of employees must be consistent with legal and Constitutional protections, and have a direct relevancy to job functions.

The criteria used for denial or revocation of security clearances as well as determinations of unsuitability must have a demonstrable relationship to national security and the effective performance of duties.

In sum, the money and effort spent in security clearance and suitability determinations must be focused and targeted on the narrow issue of genuine threats to the national security and the job-related functions of the federal service.

No measure of reform in the current system, however, can be effective without a mechanism for a check on management action. Without a meaningful employee appeals procedure in cases of clearance revocation or denial, the rubric of "national security" will remain the refuge of ill-motivated and ill-intentioned management.

The necessity of an appeals process for adverse personnel actions is a well-recognized and long-standing component of the merit system. The majority of federal employees are afforded the protection of appeal through the Merit Systems Protection Board (MSPB) or through a labor-management grievance procedure.

Removal or other adverse action resulting from the revocation of a security clearance remains as a gap in our civil service system—a system that is to ensure that "management acts for the right reasons."

National security based adverse actions, no less than any other adverse actions, must be subject to the standard of acting for the "right reasons" and be subject to review by an impartial body.

Current law, in and of itself, is inadequate to achieve this objective, and has been further weakened by recent court decisions.

At present, 5 USC 7532 provides for suspension and subsequent removal of an employee for "national security" reasons without benefit of appeal to the MSPB. Employees are afforded the opportunity to seek review of the action before a three person panel of "disinterested parties" selected by agency management. OPM maintains a roster of individuals to be utilized for this purpose. The findings of the panel are advisory and final disposition is left to the discretion of the agency head.

Removal for cause is provided for in 5 USC 7513. Employees so removed have the right of appeal to the MSBP. (In some instances, agencies are not covered under 7513, and have other statutory or regulatory based procedures for the removal of employees.)

In *Carlucci v. Doe*, 109 S. CT. 407 (1988), the Supreme Court held that 7532 procedures are not "exclusive or mandatory" for removals based on the denial of a security clearance. Agencies can take action to remove an employee under 7513 or any other available employee removal procedure provided for under law or regulation, even though such removal is clearly grounded in national security considerations.

Therefore, an employee can be denied the protections of 7532, insofar as they are protections, by management simply choosing to initiate action under another procedure.

In a related case, *Department of Navy v. Egan*, 108 S. CT. 818 (1988), the Supreme Court held that removal for cause, based on national security consideration, taken under 7513 is not reviewable on the merits by the MSPB. Only procedural questions were subject to the scrutiny of the MSPB.

Thus, any agency can easily avoid substantive review of a clearance revocation or denial.

There must be a single, uniform appeal procedure for adverse action cases arising from the denial or revocation of security clearances. That procedure must provide an impartial review based on the substance of the action, and authority to order appropriate remedies. Use of the procedure must be mandatory for cases stemming from national security considerations. Agencies must not be permitted to avoid scrutiny of their actions through simply concealing the actions under the veil of national security.

NTEU suggests:

1. 5 USC 7532 be revised to provide a mandatory procedure for national security cases.
2. A provision under 7532 for a review panel from a roster of impartial parties compiled and maintained by the MSPB for the purpose of hearing cases involving national security questions.
3. A selection process that provides for each party to strike names from the NSPB roster until an acceptable panel is assembled.
4. Review on the merits of the action by the panel.
5. Provisions for the panel to provide for reinstatement and other appropriate relief.
6. Review in the appropriate U.S. Court of Appeals if the agency head should overturn the decision of the panel.

The NTEU proposal is sensitive to the legitimate concerns of national security and provides a mechanism to ensure that those concerns are the genuine object of management action. For the past two decades, we have witnessed the abuse of the term "national security" all the way to the highest levels of government. We ask that action be taken to protect those at the lower levels of government who perform the actual work of the public service and who are too frequently the victims of their superiors.

Mr. MCCLOSLEY. Mr. Bowers.

STATEMENT OF JOSHUA F. BOWERS, STAFF ATTORNEY, NATIONAL FEDERATION OF FEDERAL EMPLOYEES

Mr. BOWERS. Thank you for the opportunity to present the views of the National Federation of Federal Employees. We represent 150,000 Federal employees including 75,000 who work for the Department of Defense. I will echo the request of the other unions that we need a neutral forum to present problems when a security clearance is involved.

The idea of an individual making a decision to suspend a clearance puts us in the position where we have to go back and request they change their mind is not due process. We contend a neutral forum is necessary in order to ensure fair play.

To emphasize the scope of the problem, I would like to cut directly to some of the questions an employee must answer when presented with the security clearance, either revocation or denial or contention. There are four questions. The questions are generally any criminal history record, financial history, alcohol or drug use, and mental health.

These questions are so broad and vague that it invites problems, problems that should be addressed in a neutral forum rather than an opportunity to go back to the person who revoked the security clearance and tell them they were mistaken.

The alcohol and drug questions require an individual to go back over their entire life and state each time they have used drugs, who was present, and circumstances involved. Individuals 30, 40, 50 years old must try to reconstruct events in the distant past. It presents an opportunity for innocent mistakes. It also presents a tremendous burden on the employee to recall each time a security clearance is renewed to reconstruct what they stated the last time.

With alcohol or drug use, they must state each time they have had a problem with a supervisor or other person and each time they fill out the form they must go back and try to reconstruct what they said last time and when the form is renewed if they make a change, they are closely scrutinized as if they were trying to hide something. The presumption seems to go against the employees.

With mental health questions, they include the requirement employees disclose problems. A mental health problem is not defined. The employee is left trying to define if when they discussed something with a church minister it was a problem; whether marital problems constitute mental health; stress, when does it rise to mental health. These result in disclosures of facts not related to the security clearance process.

Credit history requires an employee to go back over their entire life to recall each time—this is a correction in my written testimony—that a bill was 120 days late. It recalls them to go back over bankruptcies filed 30, 40 years ago. These disclosures go up the chain of command in some instances resulting in humiliation to a person who early in their life had financial problems but had no problems recently.

There is a release that is extraordinary. It allows the Government to rummage around in an individual's life. It includes the disclosure of personal history on the form, a form—

Mr. MCCLOSKEY. Could you start that again? The last paragraph.

Mr. BOWERS. There is a release to each of the DOD forms as well as with OPM. The release allows the Government to go in and rummage around in a person's life. Now in some instances this may be necessary when something is lit up. I will not give you an example. But the release includes the license to go into personal history.

Mr. MCCLOSKEY. We are going to recess for about 5 to 10 minutes. Excuse me, Mr. Bowers. I am sorry. We have votes in Foreign Affairs. We will be right back.

[Recess.]

Mr. EDWARDS [presiding]. The witness may proceed.

Mr. BOWERS. Mr. Chairman, I have almost concluded here. I will briefly restate: the release that a Federal employee must sign involved in the security clearance process includes an extraordinarily broad release which can be summarized briefly as being all their personal history, all their records, medical, financial, school records, everything is released to the Government for scrutiny.

There are no instructions to the investigator to limit this inquiry in any way.

Mr. Chairman, in view of these extraordinary questions, we believe a neutral forum is necessary because an inquiry so complex in considering our union representing white-collar and blue-collar individuals, many of our individuals are not familiar with this process. They make a good faith effort to provide information.

Five years is approximately when I understand these forms are renewed. They are confronted with the form without an opportunity to review what they said previously.

They make good faith efforts to provide the information. Contradictions or inconsistencies are going to occur when you ask an employee every 5 years to disclose all of these events in their entire life. Our employees are subject to investigators' cross-examination in a way which we believe is inappropriate in order to address these inconsistencies. It results in great outrage and insult to the employees.

We submit a neutral forum such as the Merit Systems Protection Board would be appropriate to give an employee an opportunity to correct incomplete records, inaccuracies or avoid subjective decisions made in the process where the commander who revokes a security clearance is then put in the position of having to change his mind and grant the security clearance.

Thank you very much.

[The prepared statement of Mr. Bowers follows:]

PREPARED STATEMENT OF JOSHUA F. BOWERS, STAFF ATTORNEY, NATIONAL
FEDERATION OF FEDERAL EMPLOYEES

On behalf of the National Federation of Federal Employees (NFFE), I appreciate the opportunity to present our views on the important issues before the Committee. NFFE represents some 150,000 federal workers in over 53 agencies across the nation, including 75,000 in the Department of Defense.

At the outset, NFFE acknowledges the government's need to ensure the reliability and trustworthiness of federal employees who work with classified material. However, we believe the government's legitimate interest in national security can be furthered without depriving employees of their right to privacy and a fair hearing on security clearance determinations, two fundamental deficiencies of the current system.

Under current procedures, an employee denied a security clearance by the government is also denied the right to have a neutral, third-party adjudication of the government's decision. The Committee has heard extensive testimony in the past on this issue, and NFFE frequently receives complaints from employees whose clearances have been revoked with little or no consideration of evidence they might offer in their own defense. These employees often find themselves in a Kafkaesque nightmare where they are told little or nothing about the charges against them or the specific facts which purport to justify the denial of a clearance.

Moreover, the internal agency review of clearance determinations does not provide any discovery procedures that would allow an employee to probe behind the government's decision for the evidence relied upon when a clearance is denied. As a result, careers are put at risk by incomplete or even inaccurate evidence that is subject to none of the searching scrutiny we commonly associate with fair and impartial investigations. We believe much of this injustice could be corrected by an amendment to Section 1204 of the Federal Service Labor-Management Relations Statute granting the Merit Systems Protection Board jurisdiction to review security clearance determinations.

We are also deeply troubled by the government peering into the private lives of its employees under the guise of protecting national security. In deciding whether to grant or deny a clearance, the government compels employees to disclose the most intimate details of their private lives, much of it irrelevant to the government's professed need for security. In particular, we object to the vastly overbroad security

form questionnaires used by the government to collect information for clearance determinations.

Three of these forms have been challenged by NFFE in federal court. The first, OPM Form 86, is used to gather information from employees with security clearances at civilian agencies. The other two forms, DOD 398 and 398-2, are used to gather information from Defense Department employees who hold secret and top secret clearances.

Both the OPM and DOD forms require employees to discuss: 1) Criminal History; 2) Financial History; 3) Alcohol or Drug Use; and 4) Mental health.

We will first discuss the DOD forms 398 and 398-2. We have attached the forms' cover pages, the questions challenged by NFFE in court, and the authorization for release of documents. Both Form 398 and 398-2 state that all answers to the questions pertain to an employee's "entire life." We will briefly describe each DOD question at issue and the problem created by the question:

Drugs & Alcohol (Question 20 on Form 398-2 and Question 22 on Form 398). This question requires employees to confess to any illegal drug use in their lifetime, even if it occurred just once. For each instance of illegal drug use, the employee must disclose the drug used, the date of and location of use, and other circumstances surrounding the activity.

Similarly, an employee must also disclose every occasion when use of alcoholic beverage resulted in a disciplinary action, loss of job or arrest by police. The drug and alcohol inquiries constitute an extraordinarily vague and open-ended demand for information that results in production of intimate information with no predictive value for future conduct.

The drug question results in adults in their thirties, forties and fifties attempting to reconstruct each date and circumstance when long ago in college they may have experimented with marijuana. The requirement that employees disclose all disciplinary actions related to alcohol leaves employees to struggle with whether a distant reprimand by a former employer, teacher or parent constituted discipline. We believe that the government may not delve far into the past of an employee's personal life to ferret out every modicum of information without showing that such conduct is indicative of future behavior.

Mental Health (Question 20(e) on Form 398-2 and Question 22(e) on Form 398). This question requires employees to disclose experiences with a "mental, emotional, psychological or personality disorder/condition/problem" and whether the employee has "ever been consulted or counseled by any mental health professional." This question is so broadly and vaguely worded that it invites disclosure of information not even remotely related to the Department of Defense.

What the government considers an emotional problem is not defined; it encompasses a board range of personal traumas, including those long overcome which result in no future impact. Employees responding to a demand for a list of emotional problems will be compelled to disclose counseling for such private circumstances as marital difficulties, loss of a family member, stress, sexual dysfunctional or other highly personal matters unrelated to their obligations to the government. The vagueness of the questions extorts the maximum possible disclosure of this private information from employees who will likely interpret the question broadly in fear that incomplete disclosure could cost them their job.

Arrests (Question 18 on Form 398-2 and Question 21 on Form 398). This question requires far more than disclosure of any arrest. The employee must also disclose whether they have ever been "charged, cited, held or detained." All disclosures must be made regardless of whether a court ordered the records sealed or expunged. This sweeping requirement for lifetime information would include detention by juvenile authorities. It is humiliating for thirty, forty or fifty year old adult to disclose errant adolescent conduct to an employer. A lifetime disclosure requirement including acts as a juvenile is manifestly overbroad.

Credit History (Question 19 on Form 398-2 and Question 20 on Form 398) This question asks whether an employee: A) has filed a bankruptcy petition; b) had wages garnished or property possessed; c) has been subject to a tax lien or other lien; d) has been subject to a legal judgment for a debt; or, e) has been 20 days or more delinquent on a debt. If an employee answers any of these questions affirmatively, a more detailed explanation must be provided. Throughout several years of litigation on this subject, the government has failed to produce any data linking financial problems in the distant past to a current risk of a security breach. Without any information to support a lifetime disclosure requirement, NFFE respectfully submits this question is manifestly overbroad and a violation of an employee's right to privacy.

Authority For Release Of Information And Records, Form 398-2 and Form 398 include an identical release. By signing the release an employee authorizes:

any duly accredited representative of the Department of Defense . . . to obtain any information relating to my activities from individuals, schools, residential management agents, employers, criminal justice agencies, financial or lending institution, credit bureaus, consumer reporting agencies, retail business establishments, medical institutions, hospitals or other repositories of medical records (emphasis added).

The release "may include, *but is not limited to*, thirteen categories of information, including one called "personal history" (emphasis added). The release form sets absolutely no limits on what the government can seek to learn about an employee and from whom information may be obtained. The form does not instruct agency investigators to gather only that information which is directly related to the job duties of employees being investigated, or to gather only information related to the questions. Rather, the release gives the government full license to go far beyond the scope of questions on forms 398 and 398-2. Undoubtedly, the government as employer has a legitimate interest in ensuring that its employees perform their jobs properly. But surely that does not authorize the government to rummage through an employee's personal affairs in the manner suggested by the NAQ release form.

The Office of Personnel Management Form 86 is slightly different in its approach to gaining access to information on federal workers but the effect is the same. For example, Form 86 limits disclosure on use of illegal drugs to five years but the broad release permits the government to probe into an employee's entire life. Similarly, the Form 86 financial record question limits disclosures on financial affairs to five years but the release permits the government to obtain the financial records for an employee's entire life.

CONCLUSION

The present security clearance system makes certain that many innocent employees will be permanently injured due to the unnecessarily broad questions asked on the security forms. As a result, the government will lose the services of experienced capable personnel. Each incident will be a tragedy for the individual employee when disclosure on the OPM or DOD form is misinterpreted or when information obtained by the government through the release is incomplete or inaccurate. The present system provides no meaningful procedure to correct the government's records. This problem could be resolved with the use of a neutral forum with discovery procedures such as the U.S. Merit Systems Protection Board to review a decision to grant or revoke a security clearance.

Mr. EDWARDS. Mr. Melrose.

STATEMENT OF JOSEPH H. MELROSE, JR., VICE PRESIDENT, AMERICAN FOREIGN SERVICE ASSOCIATION

Mr. MELROSE. The American Foreign Service Association welcomes the opportunity to comment on the security clearance procedures administrative due process involved with those clearance procedures.

We represent the Foreign Service employees of State, AID, and the USIA. We support the reasonable measures necessary to safeguard information essential to national security, but we also believe that administrative due process should be afforded to those employees subject to those regulations.

Mr. Edwards, I believe your observation a few minutes ago accurately sums up the situation. Significant progress has been made since 1989, but there is still a long way to go.

Historically in the State Department, problems have existed dealing with notification which was pointed out by the GAO. We completely agree with the GAO that written notification should be provided the employee. This need not substitute for our Department's view that a face-to-face discussion should also take place.

Second, timing. Delays frequently extend beyond the 90-day period that Assistant Secretary Quainton referred to. I believe the

statistics indicate somewhere in the vicinity of 65 to 70 percent extend beyond the 90-day period.

The appearance of a conflict of interest with the Assistant Secretary's participation on the Appeal Board is one that also bothers us. While we do agree that he is in current procedures insulated from the initial decision, we believe that an appearance of conflict of interest does exist and we are looking forward to the findings of the review currently being carried on by the State Department.

One area where there seems to be some slippage is individual application of debriefings at overseas locations. We sought assurances from the Diplomatic Security Service that we will look at standardization to avoid invasive and unnecessarily restrictive questioning. We have that assurance.

We will be meeting with them to discuss that in the immediate future. These are cases where, for example, the RSO at a given post—the regional security officer—debriefs an individual and seeks information which we do not believe pertinent concerning vacations, et cetera. We recognize the need for some debriefing, but believe that that should be kept within bounds.

As I said before, we believe that progress has been made. We have sought changes in the questionnaire that is filled out upon the initiation of an investigation. Those changes have been made. The form is better now than it was; but the whole process still needs work.

I would be happy to answer any questions you may have.

[The prepared statement of Mr. Melrose follows:]

PREPARED STATEMENT OF JOSEPH H. MELROSE, JR., VICE PRESIDENT, AMERICAN
FOREIGN SERVICE ASSOCIATION

Mr. Chairman:

The American Foreign Service Association (AFSA) welcomes the opportunity to comment on security clearance procedures and due process rights presently afforded to Foreign Service employees. AFSA is a professional association with over 10,000 members, comprised mainly of active duty and retired members of the Foreign Service of the Department of State, the Agency for International Development (AID), the United States Information Agency (USIA) and the Departments of Commerce and Agriculture. AFSA is also the exclusive employee representative of Foreign Service employees of State, AID, and USIA and in this role exercises statutory labor-management responsibilities.

AFSA supports reasonable measures necessary to safeguard information essential to national security. In keeping with this goal, Foreign Service employees are currently subject to Executive Order 10450, which outlines security requirements that they, along with other government employees must fulfill. The Office of Diplomatic Security (DS) is charged with implementing and overseeing the security program for Foreign Service employees.

While we will discuss problems in the Security program, including inadequate due process protection for Foreign Service employees, we also note that progress has been made in addressing these issues through a cooperative effort between AFSA and DS. As will be discussed later, on several occasions, AFSA has brought its concerns to the attention of DS and DS has shown a willingness to work with AFSA to maintain a strong security program that also effectively preserves the due process rights of concerned employees.

Historically, problems with the security clearance process have occurred when investigations are initiated to determine if revocation or reduction of the employee's clearance is warranted. Employees subject to revocation or reduction investigations have their security clearances suspended immediately upon initiation of the investigation. Because a security clearance is essential for the majority of Foreign Service employees to perform their work, this preliminary suspension can have a crippling effect on the employee's present job status, as well as his or her Foreign Service career. There are instances where some investigations have been lengthy, continuing for periods up to 4 years before any determination is made. During this period,

the employee has little, if any, access to information relating to the basis for the investigation until receipt of the letter declaring the intent to reduce or revoke clearance.

AFSA supports the General Accounting Office (GAO) recommendation that the State Department require letters of suspension which notify the affected employee of the imminent suspension and the reasons for initiation of the investigation to determine if security revocation or reduction is justified. This step should afford the affected employees adequate due process without compromising the investigation and would prepare the employee and his or her supervisors for the consequences of clearance suspension.

The panel which considers the employee's appeal of a reduction or a revocation is composed of three individuals, one of whom is the Assistant Secretary for DS. While AFSA acknowledges DS's position that the Assistant Secretary is not directly involved in the initial determination, AFSA believes that the presence of any DS official at the appeal stage raises genuine concerns of fairness and due process for the affected employee.

In the past, AFSA has responded quickly and forcefully to flagrant violations of individual rights in the security process. When DS instituted a new version of the SF-86, the top secret security clearance form, in April of 1989, AFSA filed suit in the U.S. District Court seeking an injunction because of the self-incriminating, highly invasive language, which among other things violated the constitutional right of free association. The Court agreed with AFSA and a settlement was reached which resulted in use of a new form without this offensive language.

More recently, problems of this nature have occurred at the regional or post level of the Security program, where employees, as a routine matter, are required to participate in Security "debriefings" on departure from post. The nature and extent of debriefing depends largely on whether the post is located in a country where nationals may constitute an intelligence threat, known as a "designated" country, or whether it is a nondesignated country. A more extensive debriefing would be expected for a "designated" country. However, the debriefing forms being used varied widely from post to post, regardless of country designation and went beyond acceptable standards for security inquiries. Employees at various posts were being asked to disclose leave destinations, acquaintances made while on leave, irrespective of whether these acquaintances were from "designated" countries or not, and an array of self-incriminating questions about security violations at post. After receiving cables from concerned employees in posts around the world including Athens and St. Petersburg, we alerted DS to the problem and are working with them to standardize these forms and remove the unnecessary, offensive, and often intrusive questions.

Once again, progress has been made in making the Security Clearance procedures fairer and more consistent for all employees. It is clear that there are still significant challenges to be met in the form of due process concerns and lack of consistent policies in the security program. However, it should also be clear that improvements have occurred in these areas. AFSA remains willing to work towards the development of a strong security program that also respects the rights of employees. We look forward to future cooperative efforts with the State Department, the Office of Diplomatic Security and Congress to achieve this goal.

Mr. EDWARDS. Thank you very much, Mr. Melrose. It occurred to me when you described some of these questions that an employee or applicant might have to be asked about a bankruptcy of 30 years ago. But if you rob a bank on television, 6 years later they cannot arrest you for that or try you. Shouldn't there be a statute of limitations in these regs of 10 years or something like that? Something you did—a bankruptcy 15 or 20 years ago or misbehavior a long time ago, perhaps as a young person—should that even be looked into? It seems to me not. Behavior in the last 10 years would be the most important.

Mr. MELROSE. Mr. Chairman, the forms we are using at the State Department now request information for primarily the last 5 years.

Mr. EDWARDS. Five years? Is that drug use and alcohol use, the last 5 years?

Mr. MELROSE. That's correct.

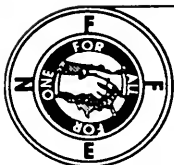
Mr. BOWERS. If I may, Mr. Chairman, I read the form a bit differently. The form in some instances asks for 5 years of disclosure such as marijuana. In other things what have you done in the last 5 years. In other things, it goes back the entire life. The State Department requires disclosure for an individual's entire life. The financial question asks for some disclosures over an entire life. Others are lifetime.

The mental health disclosure including the problems referenced at the State Department—I shouldn't say the State Department. It is standard form 86 issued by the Office of Personnel Management which is used for all civilian employees outside of DOD that have security clearances. That form requires disclosure over the entire life; in a couple of instances, it limits it to 5 years.

We would be happy to provide that form to the committee.

Mr. EDWARDS. I think we would like to see that form for the record.

[The information follows:]



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National Federation of Federal Employees

1016 16th Street, NW, Washington, D.C. 20036
(202) 862-4400; FAX (202) 862-4432

May 6, 1993

Honorable Don Edwards

Judiciary Subcommittee on Civil and
Constitutional Rights

Room 806

House Annex Number One

New Jersey Avenue and C Street, S.E.

Washington, D.C. 20515

Dear Chairman Edwards:

The National Federation Federal Employees respectfully submits copies of the Department of Defense (DOD) and Office of Personnel Management (OPM) forms referred to in our testimony before the Committee on May 5, 1993. DOD form 398-2, entitled National Agency Questionnaire, and DOD form 398, entitled Personnel Security Questionnaire, are used to gather information from Defense Department employees who hold secret and top secret clearances.

The forms contain identical questions requiring employees to discuss for their entire life:

- 1) Criminal History
- 2) Financial History
- 3) Alcohol or Drug Use
- 4) Mental Health

The DOD forms include instructions to employees on the broad scope of disclosure required for each question.

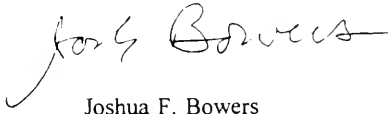
The Office of Personnel Management form 86 is slightly different in its approach to gaining access to information on federal workers. Question 29 requires disclosure concerning specific drugs used during the last five years. However, the question goes on to require disclosure of "problems (disciplinary actions, evictions, formal complaints, etc.) on or off

May 6, 1993

the job" for employee's entire life. The form does not define the terms "problems", or "formal complaints", nor does it explain the scope of information intended by the use of "etc." Question 27 concerning finances limits disclosure to the last five years, but the form contains a release that grants access to financial records for an employee's entire life.

The National Federation of Federal Employees sincerely appreciates the opportunity to discuss these important issues with the Committee.

Very truly yours,

A handwritten signature in cursive script, reading "Joshua F. Bowers". The signature is written in dark ink and is positioned above the printed name.

Joshua F. Bowers
Staff Attorney

DEPARTMENT OF DEFENSE
NATIONAL AGENCY QUESTIONNAIRE (NAQ)
 DD FORM 398-2

CONTENTS

THE NAQ PACKAGE CONSISTS OF THE FOLLOWING:

- | | |
|--|-------------------------------|
| 1 Privacy Act Statement | 4 General Instructions |
| 2 Authority for Release of Information and Records | 5 Detailed Instructions |
| 3 DD Form 398-2, "Department of Defense National Agency Questionnaire" | 6 Listing of Reportable Drugs |

PLEASE BE SURE YOU HAVE ALL PARTS OF THE PACKAGE.

PRIVACY ACT STATEMENT

AUTHORITY:

50 U.S.C. Sections 781-887, Internal Security Act of 1950, 5 U.S.C. Section 9101, Criminal history record information for national security purposes, Executive Order 9397, November 1943 (SSN), Numbering System for Federal Register Accounts Relating to Individual Persons, Executive Order 10450, Security Requirements for Government Employment, Executive Order 10865, Safeguarding Classified Information Within Industry, Executive Order 11935, Citizenship Requirements for Federal Employment, Executive Order 12333, United States Intelligence Activities, Executive Order 12356, National Security Information, and 5 U.S.C. Section 301, Department Regulations

PRINCIPAL PURPOSES:

To obtain background information for personnel security investigative and evaluative purposes to make reliability and security determinations, to allow access to classified information, sensitive areas, or equipment, to ensure that enlistment and retention in the Armed Forces is clearly consistent with national security, or to permit assignment to sensitive national security positions. The data may later be used as part of a review process to evaluate continued eligibility for access to classified information. The Social Security Number will be used to verify identity and locate existing records.

ROUTINE USES:

To federal, state, local, or foreign law enforcement authorities if the record indicates, on its face or in conjunction with other records, a violation of law, to federal, state, or local government agencies if necessary to obtain information for a reliability or personnel security determination, to a requesting federal agency concerning its retaining, issuing a security clearance, or making a reliability or personnel security determination concerning assignment to or retention in a sensitive position, or letting a contract, to a congressional office in response to an inquiry made at the request of the individual, to foreign law enforcement, security, investigatory, or administrative authorities to comply with international agreements, to the Office of Personnel Management when necessary to carry out its personnel security functions, to the Department of Justice in pending or potential litigation to which the record is pertinent, to the General Services Administration and National Archives and Records Administration for records management purposes, to the Merit Systems Protection Board for use in administrative proceedings and investigations of possible prohibited personnel practices, to individuals and entities outside the Department of Defense and U.S. Government for counterintelligence activities authorized by federal law or executive order.

DISCLOSURE:

Voluntary; however, failure to furnish the requested information may result in our being unable to complete your investigation, which could result in your not being considered for clearance, access, entry into a uniformed service, or assignment to sensitive duties. For contractor personnel, failure to furnish information may result in administrative termination of any existing Industrial Security Clearance to include a contractor-granted clearance.

AUTHORITY FOR RELEASE OF INFORMATION AND RECORDS

I have been provided a Privacy Act Statement advising me that certain information is required to assist the Department of Defense in making a security determination concerning me and that execution of this form is voluntary. The information will be used for the purpose of determining my qualification for employment with the Federal Government, service in the Armed Forces, or access to classified information.

I therefore authorize any duly accredited representative of the Department of Defense, including those from the Defense Investigative Service, to obtain any information relating to my activities from individuals, schools, residential management agents, employers, criminal justice agencies, financial or lending institutions, credit bureaus, consumer reporting agencies, retail business establishments, medical institutions, hospitals or other repositories of medical records. This information may include, but is not limited to, my academic, residential, achievement, performance, attendance, personal history, disciplinary, criminal history record, arrest, conviction, medical, psychiatric/psychological, and financial and credit information.

I further authorize the Defense Investigative Service and any other authorized Department of Defense agency, to request criminal history record information about me from criminal justice agencies for the purpose of determining my eligibility for access to classified information, or assignment to, or retention in, sensitive national security duties, in accordance with 5 U.S.C. 9101. I understand that I may request a copy of such records as may be available to me under the law.

I direct you to release such information upon request of the duly accredited representative of any authorized Department of Defense agency regardless of any agreement I may have made with you previously to the contrary.

I have been advised that the original of this authorization will be placed on file with the Department of Defense. This authorization will expire in five (5) years or upon the termination of my affiliation with the Department of Defense, whichever is sooner.

a. TYPED NAME (LAST, First, Middle Initial)		b. OTHER NAMES USED	
c. DATE OF BIRTH (YYMMDD)	d. SOCIAL SECURITY NUMBER	e. CURRENT HOME ADDRESS (Street, City, State and Zip Code)	
f. HOME TELEPHONE NUMBER (Include Area Code)			
g. SIGNATURE		h. DATE SIGNED (YYMMDD)	

DEPARTMENT OF DEFENSE NATIONAL AGENCY QUESTIONNAIRE

Before completing form, read attached Privacy Act Statement, General, and Detailed Instructions
Items outlined by heavy black line are for Requesting Agency's use only

Form Approved
OMB No. 0704-0298
Expires Jul 31, 1992

Public reporting burden for this collection of information is estimated to average 1.5 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Washington Headquarters Service, Directorate for Information Operations and Reports, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202-4302, and to the Office of Management and Budget, Paperwork Reduction Project (0704-0298), Washington, DC 20503.

A. REQUEST DATE (Y/M/MDD)		B. TYPE REQUEST (X one)		C. LOCAL FILES CHECKED WITH FAVORABLE RESULTS (X one) <small>Use "No" explain in item 18.</small>		FOR DIS USE ONLY	
D. CODE		(1) NAC		(2) Other (Specify)		<input type="checkbox"/> (1) Yes <input type="checkbox"/> (2) No	
		(3) DNAC					
		(4) ENTNAC					
E. GOVERNMENT EMPLOYMENT (X one)				F. CITIZENSHIP VERIFIED (X one)			
(1) Yes (2) No				(1) Yes (2) No			
G. FORWARD THIS REQUEST TO (Include Zip Code)				H. RETURN RESULTS TO (Include Zip Code)			
I. REASON FOR REQUEST							
<input type="checkbox"/> SECRET <input type="checkbox"/> CONFIDENTIAL <input type="checkbox"/> COMMISSION <input type="checkbox"/> ENLISTMENT <input type="checkbox"/> NATIONAL GUARD <input type="checkbox"/> RESERVES <input type="checkbox"/> ROTC <input type="checkbox"/> OFFICER CANDIDATE <input type="checkbox"/> SERVICE ACADEMY <input type="checkbox"/> PERS. RELIABILITY PROGRAM <input type="checkbox"/> RED CROSS/USO <input type="checkbox"/> NAFL <input type="checkbox"/> SUMMER HIRE <input type="checkbox"/> EDUCATION/ ORIENTATION <input type="checkbox"/> NON-CITIZEN OVERSEAS <input type="checkbox"/> DOD BUILDING PASS <input type="checkbox"/> UNESCORTED ENTRY <input type="checkbox"/> AREA ACCESS <input type="checkbox"/> OTHER (Specify)							
1. NAME							
a. LAST, First, Middle (Last name in all capital letters)				b. Maiden Name (if any)			
2. OTHER NAMES USED (Last first middle) (Include all other names used and dates of use)							
3. SOCIAL SECURITY NUMBER							
4. DATE OF BIRTH (Y/M/MDD)		5. PLACE OF BIRTH		c. State		d. Country	
		a. City		b. County			
6. PHYSICAL CHARACTERISTICS (Complete all below)							
a. Sex		b. Race		c. Height		d. Weight	
						e. Hair Color	
						f. Eye Color	
7. STATUS (X one - if not X and complete as applicable)							
a. Consultant		d. U.S. Government Employee		e. Military (Complete (1) through (3))			
b. Contractor Employee		(Complete (1) and (2))		(1) Rank			
				(2) Branch of Service			
c. CODEP		(3) X if Applicable		(3) X if Applicable			
8. CITIZENSHIP (X one - if not X and complete as applicable)							
a. United States (X one) (1) (2) (3) (4) or (5)							
(1) Born in U.S.							
(2) Born abroad of U.S. parents							
(3) Naturalized (Complete (a) through (d))							
(4) Derived from naturalized parent (Complete (a) through (c))							
(a) Certificate Number(s)		(b) Date (Y/M/MDD)		(c) Place		(d) Court	
						(e) Alien Registration Number	
(5) Dual Citizenship? (X one) (See DATED INSTRUCTIONS)							
b. United States National (X one) U.S. Trust Territory or Possession							
c. Alien (Complete (1) through (4))							
(1) Current Citizenship							
(2) Registration Number							
(3) Intent to become a U.S. citizen? (X one)							
(4) Yes (5) No							
(6) Permanent Resident Status? (X one)							
(7) Yes (8) No							
9. MILITARY SERVICE (X one - if not X and complete as applicable) (Include Branch - National Guard service)							
a. From (Y/M/MDD)		b. To (Y/M/MDD)		c. Branch of Service		d. Rank	
						e. Service Number(s)	
						f. Type of Discharge	
						g. Country	
10. RESIDENCES (X one - if not X and complete as applicable) (Use the inclusive dates for each period of residence - if you list a Rural Route address, provide instructions on map for locating that residence. Do not list Post Office Box address. See DATED INSTRUCTIONS.)							
a. Current home Telephone (Include Area Code)							
b. Dates (Y/M/MDD)							
c. Address							
(1) From		(2) To		(3) Number, Street and Apartment Number		(4) City	
						(5) State	
						(6) Zip Code	
						(7) Country	
Present							

GENERAL INSTRUCTIONS

AUTHORITY FOR RELEASE OF INFORMATION AND RECORDS

You should read the Privacy Act Statement and the "Authority for Release of Information and Records." Sign and date the authorization. Completion of the authorization is voluntary, however, failure to authorize the release of records may result in our being unable to complete your investigation.

Completing the National Agency Questionnaire (NAQ).

The NAQ is an important document and must be completed without misstatement or omission of important facts. Failure to provide all requested information will significantly delay your investigation. All entries are subject to verification by investigation. All items on the form must be completed. A knowing and willful false statement on this form can be punished by a fine or imprisonment or both.

- Before entering any information on the form, carefully read the Detailed Instructions provided with the form.
- For items 10 and 11, provide information in these items for the last 5 years, however, if you are under the age of 21, the time period is the last 3 years or the period since your 16th birthday, whichever is shorter.
- For all other items, complete without regard to time.
- All questions must be answered. Omissions, gaps, errors, or incomplete items may result in long investigative or processing delays.
 - Do not indicate on the form that certain information can be obtained from another source. Take the time to obtain information not readily available. If requested information cannot be provided, state the reason.
 - If an item does not apply, enter "None" or "Not Applicable," as appropriate.
 - If you do not know dates of employment or residence precisely, provide the dates to the best of your memory and follow with "est." for "estimated" or "app." for "approximately." Do not use the term "unknown."
 - If an entry refers to a divided country (e.g. Germany, Korea), specify whether East or West, North or South.

- If additional space is required for any item, use Item 14 and, if needed, additional sheets of paper (See Detailed Instructions for Item 14.)
- If you have a question about the NAQ that is not answered by the Detailed Instructions, contact the person or office that gave you the NAQ.
- Before signing the NAQ, ensure that each item is checked against the Detailed Instructions for that item and that the completed NAQ is carefully read.
- Unless otherwise specified:
 - List all dates using the last two digits of the year and the two-digit number representing the month (e.g. January 1988 would be entered as 8801).
 - Names of persons will be entered in the following order: Last name, first name, and middle initial. The last name will appear in all CAPITAL LETTERS.
 - Addresses must include the number and street, city, state, and zip code, or country, as appropriate. Attach a sketch map or detailed directions for rural or difficult to locate addresses in the United States.
 - All items on the form must be completed in chronological order beginning with the present or most recent and working backwards.
 - Telephone numbers must include the area code.
- The NAQ should be typed using a black ribbon.
- You must sign the NAQ.
 - The original NAQ and four copies should be given to the person or office that gave you the form. The copies may be made using black carbon paper or they may be photocopies of the original NAQ. All copies must be complete reproductions that include signatures. We recommend that an extra copy be prepared and retained for your personal records. (For contractor conversions, revalidations, reinstatements, or concurrent clearances, only an original form must be submitted to DISCO.)

DETAILED INSTRUCTIONS

All items must be completed in their entirety.

ITEMS A THROUGH I AND ITEM 16 (If Military or DoD Civilian Requester) OR ITEM 17 (If Contractor Request) MUST BE COMPLETED BY REQUESTING AGENCY.

ITEM A.

Enter the date of the request in year, month, day order. December 31, 1988, should be shown as 881231

ITEM B.

Mark the appropriate block for the type of request. Not applicable to contractor requests.

ITEM C.

Mark the appropriate block. In the event there is derogatory information on file, list this information in item 16. Local files include personnel, security, basemilitary police and medical files, as appropriate.

ITEM D.

Enter the Unit Identification Code (UIC) or Personnel Accounting System (PAS) code. Contractors should enter the Commercial and Government Entity (CAGE) code.

ITEM E.

Government employment. Mark "Yes" or "No."

ITEM F.

Citizenship verified. Mark "Yes" or "No."

ITEM G.

For DoD Military and DoD Civilian enter

Defense Investigative Service
Personnel Investigations Center
P. O. Box 1083
Baltimore, Maryland 21203-1083

For contractors enter

Defense Industrial Security Clearance Office
P. O. Box 2499
Columbus, Ohio 43216-5006

ITEM H.

Enter the name of the organization and mailing address that the investigation should be sent to upon completion. All contractor investigations will be returned to the Defense Industrial Security Clearance Office (DISCO).

ITEM I.

Mark the appropriate block indicating reason for request. If form is used for contractor conversions, revalidations, reinstatements or concurrent clearances, indicate in the shaded area the security classification of the material or information to which the employee will have access. (Specify DOE or NRC "Q" or "L" conversions as TS / S / CONF in shaded area.)

ITEMS 1 THROUGH 15 AND 18 THROUGH 23 SHALL BE COMPLETED BY THE APPLICANT.

ITEM 1 - NAME.

a. LAST, First, Middle. List your name in the following order: LAST NAME first name, and middle name, LAST NAME IN ALL CAPITAL LETTERS. Names should agree with military and/or civilian employment records, if not, explain in item 14.

- If you have no middle name, enter "NMN."
- Include additional designations, such as Jr., Sr., II (2nd), III (3rd), when applicable.
- If your name consists of initial(s) only, enter the appropriate initial(s) followed by "(IO)".
- Make sure your name appears the same in all name blocks on the NAQ and all other documents, attachments, etc., you submit with the NAQ.

b. Maiden Name. Enter if applicable.

ITEM 2 - OTHER NAMES USED.

List any other name by which you are or have been known. Include former names, changes in names, nicknames, or variant spellings used. If the name has changed, explain, in item 14, why, when, and where such change took place. List the inclusive dates all other names were used.

ITEM 3 - SOCIAL SECURITY NUMBER.

Copy exactly as on your Social Security card. List ALL Social Security Numbers you have ever used.

ITEM 4 - DATE OF BIRTH.

Give the year, month, and day of your birth using the last two digits of the year, the two-digit number for the month, and the two-digit number for the day (e.g., August 31, 1944, would be entered as 440831).

ITEM 5 - PLACE OF BIRTH.

List your place of birth in the following order:

- a. City. Do not abbreviate.
- b. County. Do not abbreviate.
- c. State. Use the two-letter abbreviation.
- d. Country. If other than the U.S. (do not abbreviate).

DETAILED INSTRUCTIONS

All items must be completed in their entirety.

ITEM 6 - PHYSICAL CHARACTERISTICS

- a. Sex. Enter "Male" or "Female"
- b. Race. Enter one of the following, as appropriate
 - Red (American Indian)
 - Yellow (Asian/Mongoloid)
 - Black (Negroid or African)
 - White (Caucasoid)
 - Unknown
 - Other (Specify)
- c. Height. Enter height in feet and inches
- d. Weight. Enter weight in pounds
- e. Hair Color. Self-explanatory
- f. Eye Color. Self-explanatory

ITEM 7 - STATUS

- Mark one of the following.
- a. Consultant.
 - b. Contractor Employee.
 - c. OODEP (cleared in connection with the facility clearance).
 - d. U.S. Government Employee. List grade or wage scale. If you are an applicant for a Federal Civil Service position, mark block (2)
 - e. Military. List rank and branch of service. If you are a Reserve or National Guard member and if your unit is requesting this investigation, mark this block only. If you are an applicant for entry into the U.S. military, mark block (3).

ITEM 8 - CITIZENSHIP

- a. United States Citizen. Mark either block (1), (2), (3), (4), or (5). If block (2) is marked, provide place of initial entry into the U.S. and indicate location of birth registration with the U.S. authorities. If you received a Certificate of Citizenship, list the certificate number and date of issuance by the Immigration and Naturalization Service. If either block (3) or (4) is marked, (a) through (e) must be completed.
 - (a) Certificate Number(s). If naturalized or derived, provide naturalization certificate number
 - (b) Date. List date naturalization or derived citizenship certificate was issued
 - (c) Place. List city and state where naturalization or derived citizenship certificate is recorded.
 - (d) Court. List the name of the court where naturalization or derived certificate is recorded
 - (e) Alien Registration Number. Self-explanatory
- If block (5) is marked, indicate in Item 14 the name of the other country in which you hold citizenship. Also, explain the circumstances of how you hold dual citizenship

ITEM 8 - CITIZENSHIP (Continued)

- b. United States National. Includes persons born in Puerto Rico, Guam, American Samoa, Northern Mariana Islands, U.S. Virgin Islands, Panama Canal Zone, Federated States of Micronesia, or the Republic of the Marshall Islands
- c. Alien. Complete blocks (1) through (4)
 - (1) Current Citizenship. List the country of which you are currently a citizen.
 - (2) Registration Number. If you have not been granted permanent resident status, provide your type of visa in this block
 - (3) Intend to become a U.S. citizen? Mark the appropriate block. If "Yes," and you have made application for citizenship, list date and place of application. If "No," explain in Item 14 the reason why you do not intend to become a U.S. citizen
 - (4) Permanent Residence Status? Mark the appropriate block

ITEM 9 - MILITARY SERVICE

- If form is used for contractor conversions, revalidations, reinstatements or concurrent clearances, indicate "Not Applicable." Otherwise, complete blocks a through g. Indicate date of first enlistment and date of final discharge for each branch of service if you had continuous duty. If you had break(s) in duty, each separate period should be listed. Officers who have prior enlisted, warrant, or reserve service should list each of these periods separately. Reserve or National Guard service will be shown in this item. If more room is needed, provide the information in Item 14. The most recent period should be listed first.
- a. From. Enter date service began
 - b. To. Enter date service ended. (If currently on active duty enter "present" for the latest entry and appropriate ending dates for all other periods of service)
 - c. Branch of Service. List the appropriate branch of service
 - d. Rank. List your rank on the date of discharge from each period of service
 - e. Service Number(s). If you entered the U.S. Armed Forces after January 1970, your service number is the same as your Social Security Number. If you entered the U.S. Armed Forces before January 1970, enter both your Social Security Number and your original service number
 - f. Type of Discharge. List type of discharge. If you received anything other than an Honorable Discharge (even if it has now been changed), provide a full statement regarding the circumstances surrounding the discharge. If your discharge has been updated, provide information regarding the change, including the date it occurred, in Item 14
 - g. Country. If service was with other than the U.S. Armed Forces, list appropriate country (explain in Item 14)

DETAILED INSTRUCTIONS

All items must be completed in this history

ITEM 10 - RESIDENCES.

- List residences for last 5 years. (List current residence only for contractor conversions, revalidations, reinstatements, or concurrent clearances.)
- Do not furnish information prior to your 16th birthday.
- IF ANY PERIOD OF RESIDENCE WAS OVERSEAS, provide the names and addresses of two individuals (preferably currently living in the U.S.), who can verify the period of overseas residence through personal knowledge. This information should be listed in item 14.
 - a. Current Home Telephone. Self-explanatory
 - b. Dates. Give the inclusive dates for each period of residence.
 - c. Address.
 - (1) Number, Street and Apartment Number. Do not list a permanent mailing address or family residence in this item unless you actually resided at that address during the period listed. Furnish residence address in local community or on base/ installation while in military service.
 - If you have been assigned to any temporary duty location for 90 days or longer within the investigative period, you must list your residence(s) during that temporary duty.
 - If the residence was on a military installation, include barracks or house number.
 - List the actual place of residence while attending school. Do not list merely the name of the school or "On Campus" as a place of residence.
 - If you received mail at a Post Office Box address, do not list the Post Office Box, list your actual residence address.
 - If you give a metropolitan address (e.g. New York, Los Angeles), list the borough or suburb.
 - A sketch map or detailed instructions must be appended for rural or difficult to locate addresses.
 - If you resided in an apartment complex in the last 5 years, list the name of the complex in item 14.
 - (2) City. Do not abbreviate.
 - (3) State. Use the two-letter abbreviation.
 - (4) Zip Code. Self-explanatory.
 - (5) Country. Do not abbreviate.

ITEM 11 - EMPLOYMENT / DUTY ORGANIZATION.

List, beginning with the present, each period of employment (to include part-time employment, self-employment and unemployment) for the required number of years. Also list current Reserve or National Guard unit.

- List employment information for the last 5 years (List current employment only for contractor conversions, revalidations, reinstatements, or concurrent clearances.)
- Do not furnish information prior to your 16th birthday.
- If unemployed and not attending school full time during any period, list, in item 14, the name and current address of an individual who can verify your activities during the unemployment/ self-employment period. IF ANY PERIOD OF EMPLOYMENT WAS OVERSEAS, list, in item 14, the names and addresses of two individuals (preferably currently living in the U.S.) who can verify the period of overseas employment through personal knowledge.
 - a. Federal Service. If "Yes," list in item 14 the inclusive dates of service and name and address of last organization. If listed in 11 c, so indicate.
 - b. Dates. Provide the inclusive dates for each period of employment, part-time employment, self-employment, unemployment, and current Reserve or National Guard service. All time periods must be covered. If you worked for two different employers at the same time, list both.
 - c. Name of Employer. Military personnel should identify each unit, organization, or station to which assigned. If self-employed during any period, list the name and address of the business. If any period of employment was for a temporary help supplier, list only the temporary help supplier as the employer, even though work may have been performed at different locations with client companies. If employed through a union hiring hall, list firms by which employed. Do not list the union as an employer unless your salary was, in fact, paid by the union.
 - d. Job Site, Duty Station or Home Port. Provide the address for each employment listed. If any period of employment was in a large metropolitan area (e.g., New York, Chicago, Los Angeles), include the borough or suburb. If employed by a large manufacturing concern (i.e. Chrysler or General Motors Corporation in Detroit, Michigan), give the specific name and address of the plant where you worked. List, in item 14, the complete address of the location of your employment records if it is different from the address of the job site or duty station. List any temporary duty locations totalling 90 days or longer within the required period.

DETAILED INSTRUCTIONS

All items must be completed in their entirety.

ITEM 11 - EMPLOYMENT / DUTY ORGANIZATION.

(Continued)

e. Immediate Supervisor.

(1) Name List LAST NAME, first name, and middle initial

(2) Telephone Number List the area code and work telephone number of the supervisor

ITEM 12 - FAMILY / ASSOCIATES.

If form is used for contractor conversions, revalidations, reinstatements or concurrent clearances, indicate "Not Applicable." Otherwise, provide the information listed below for:

- Your father, mother, spouse, cohabitant and children
- All brothers and sisters NOT born in the United States
- All relatives or friends to whom you, your spouse, or cohabitant are bound by affection or obligations IF such persons are residing in, are citizens of, or are employed by or otherwise acting as representatives of any foreign country

a. Relationship and Name. Provide the individual's relationship to you (if not already provided on the form), and name. Include maiden name of mother and spouse

b. Present Address. Provide the current address of each person listed. If person listed is dead, enter "Deceased"

c. Date of Birth. Provide date of birth for all persons listed in terms of year, month, and day using the last two digits of the year, the two digit number for the month and the two digit number for the day (e.g., August 31, 1944, would be entered as 440831)

d. Place of Birth. List city and state or country (if other than the U.S.)

e. Citizenship. Enter citizenship of each person listed. Additionally, provide, in Item 14, naturalization information as in Item 8 a or alien registration information as in Item 8 c for all listed foreign-born relatives. Alien registration information must include the alien registration number and the date the card was issued

ITEM 13 - FOREIGN TRAVEL / CONNECTIONS.

a. Foreign Connections. Mark the appropriate block. If "Yes," explain in Item 14 the nature and extent of foreign business connections and property interests, to include nature of business for each foreign firm and details of ownership for each foreign entity

ITEM 13 - FOREIGN TRAVEL / CONNECTIONS.

(Continued)

b. Foreign Employment. Mark the appropriate block. If employed by or acted as a consultant, identify the foreign government, firm, or agency and describe the nature of employment or relationship. Provide, in Item 14, inclusive dates of all such employment(s) or relationship(s). In addition, if such employment or relationship is current, provide:

- Details of ownership for each foreign entity
- The percentage of time devoted to each foreign entity
- For the position requiring this security clearance or investigation, provide a summary of your duties with the U.S. firm submitting your NAQ
- Product or service of that U.S. firm

c. Foreign Travel. Mark the appropriate block. List, in Item 14, inclusive dates of travel for each country visited and the purpose of the travel. Travel on official U.S. Government orders may be omitted. However, you must list all travel outside the sphere of your official duty location to include all travel while in leave status.

(NOTE: Foreign travel as a military dependent is not considered as "under official orders.") For travel in cities or countries divided into free world and Communist-oriented parts, indicate in which part the travel was performed.

If during any of your travels you established a residence in a foreign country, provide the exact address, unless previously listed under Item 10. Travel to Canada and/or Mexico must be listed.

If you have lived near the border with another non-designated country and you have made short (one day or less) trips to that neighboring country, you do not need to list each trip. Instead, list:

- The time period over which the trips were made.
- The fact that numerous trips were made
- To what country the trips were made
- The purpose(s) of the trips, such as sightseeing, shopping, etc.

DETAILED INSTRUCTIONS

All items must be completed in their entirety.

ITEM 13 - FOREIGN TRAVEL / CONNECTIONS.
(Continued)

d. Foreign Contact. Mark the appropriate block if "Yes," provide the following information

- Date(s) of contact
- Identity of government, establishment, or representative contacted
- Location of contact
- Purpose of contact
- Means of contact (e.g. in person, by telephone, written correspondence)

ITEM 14 - REMARKS.

Use this space for the continuation of those items where insufficient space was provided or to provide additional pertinent information. If necessary, attach additional sheets and indicate "See Attached Sheet(s)" at the end of the "Remarks" section. When using the "Remarks" section or attaching additional sheets, always identify the item number being continued and follow the format for entering information as prescribed on the NAQ and in the instructions. If additional space is required, continue on a plain sheet of 8½" by 11" paper, in the top left hand corner of the paper, enter your full name and Social Security Number, and the phrase "Continuation Sheet - DD Form 398-2."

ITEM 15 - CERTIFICATION BY PERSON COMPLETING FORM.

You should carefully review the portion of the form you have completed to ensure that you have answered all items and that it is accurate in all details. If you have not yet signed the authorization for release of information and records, do that now. You should fully understand the implication of certifying to a false statement. When you are satisfied that it is complete, sign the certification along with any attachments. (For contractor conversions, attach DD Form 214 or SF 50, as appropriate.)

ITEM 16 - RESULTS OF LOCAL FILES CHECK.

To be completed by Military and DoD Civilian requesters only. (Not applicable to contractor requests.)

ITEM 17 - CERTIFICATION BY CONTRACTOR.

The Facility Security Officer (FSO) or a designee must complete this block. (Top Secret request must be signed by FSO or another cleared OODEP.)

- a. Contract Number. Enter the number of the contract for which the clearance is being requested.
- b. Telephone Number of FSO / Designee. Self-explanatory.
- c. Typed Name of FSO / Designee. Self-explanatory.
- d. and e. Signature of FSO / Designee and Date Signed. Sign that the security clearance is required, and date.

ANSWERS TO ITEMS 18 THROUGH 22 ARE NOT LIMITED TO THE LAST 5 YEARS, BUT PERTAIN TO YOUR ENTIRE LIFE.

FOR CONTRACTOR PERSONNEL ONLY:

- If you prefer, page 5 may be detached, completed in private, placed in a sealed envelope, and given to security personnel with the other pages of your form.
- If you choose this option, processing of your form will be slowed since electronic transmission will not be possible.
- If you choose this option, it is important that you carefully read the Detailed Instructions for Items 18 through 23 and follow them completely since these questions will not be reviewed by your security personnel.
- Failure to provide all required information will result in further processing delays.
- If you choose the option of completing these items in private and additional space is required to answer them, do not use the "Remarks" section (Item 14). Instead, continue your answer on a plain sheet of 8½" x 11" paper, in the top left corner of the paper, enter your full name and Social Security Number and the phrase "Continuation Sheet - DD Form 398-2."

ITEM 18 - ARRESTS.

Regardless of the outcome of the incident or when it occurred, if the answer to Item 18 is "Yes," it must be explained completely. If you were adjudicated a youthful offender or juvenile delinquent and the record has been "sealed," expunged, or stricken from the court record, you must still answer Item 18 and provide the required information with the following exception:

If you have been found guilty of a federal offense under Section 404 of the Controlled Substances Act (21 U.S.C. 844) and, subsequent to such a finding, the court issued an expungement order under the authority of either 21 U.S.C. Section 844 or 18 U.S.C. Section 3607, then you need not report the arrest or disposition information on your NAQ. This, however, is the only exception to this reporting requirement.

NOTE: FOR MILITARY ENLISTMENT APPLICANTS ONLY. You must list, in Item 14, all traffic violations regardless of what type of violation or amount of fine.

DETAILED INSTRUCTIONS

All items must be completed in their entirety.

ITEM 18 - ARRESTS (Continued)

WHEN IN DOUBT AS TO THE NECESSITY FOR LISTING INFORMATION IN THIS ITEM, IT IS RECOMMENDED THAT INCIDENTS BE LISTED TO PRECLUDE FUTURE QUESTIONS REGARDING OMISSIONS FROM THE FORM. IF AN INCIDENT WAS LISTED ON A PREVIOUSLY SUBMITTED NAQ, IT IS STILL REQUIRED TO BE LISTED ON THE CURRENT NAQ.

a. Mark either "Yes" or "No." If "Yes," provide the following clarifying information in item 18 b.

b. Details.

(1) Date: Provide date(s) of arrest(s) or charge(s).

(2) Nature of Offense or Violation: Any action that resulted in the placement of your name on a police or court record must be listed, including any act committed while still a juvenile or if you were considered a "Juvenile Offender." Give a docket number or indictment number in addition to charge, if known. List all Article 15, UCMJ, or Captains' Mast if they resulted in fines, restrictions, demotions, etc. DO NOT LIST PENAL CODES. THE ACTUAL OFFENSE OR VIOLATION MUST BE STATED.

(3) Name and Location of Law Enforcement Agency: Enter the name of the law enforcement agency and its location (city or county and state, or country if not in the U.S.).

(4) Name and Location of Court: Enter the name of the court and its location (city or county and state, or country if not in the U.S.). If the case did not go to court, mark "None."

(5) Penalty Imposed or Other Disposition in Each Case: Provide details as to the outcome of the action against you. If any penalty was imposed, give details. If you spent any time in jail, prison, reform or industrial school or any juvenile facility or institution, list in Item 14 the location and duration of your confinement. If you are currently under a suspended sentence, parole, probation, or are awaiting any action on charges against you, that information should be indicated.

ITEM 19 - CREDIT HISTORY

If any "Yes" block is marked in Items a through e, list in Item 14 the information indicated below.

a. Bankruptcy

- Name and location of court where bankruptcy petition was filed
- Date of filing
- If bankruptcy is pending, the date the petition will be heard

ITEM 19 - CREDIT HISTORY (Continued)

b. Wages Garnished/Repossessions.

- Date(s) of garnishment(s) and/or repossession(s)
- Name and location of individual(s) or organization(s) involved

c. Tax Liens.

- Date(s) of lien(s)
- Name and location of court where lien was filed against you
- Identity of taxing authority which filed the lien

d. Unpaid Judgments.

- Date(s) of judgment(s)
- Name and location of court where judgment was filed against you
- Identity of person(s) or business(es) filing judgment

e. Delinquent Debts.

- Name and address of creditor(s) involved
- Dollar amount(s) past due
- Length(s) of time past due
- Date(s) of delinquency

ITEM 20 - DRUG / ALCOHOL USE AND MENTAL HEALTH

If "Yes" is answered to any of the questions in this item, describe the circumstances in Item 14, in accordance with the following explanations. If necessary, attach additional sheets for a full detailed statement.

a. Drug Use / Possession: A listing of those drugs which have been designated as controlled substances is located on the last page of these instructions. If you used any of these drugs, or any other mind-altering substances, mark "Yes" and provide, in Item 14, the following details:

- Drug(s) used/possessed
- Date(s) of use/possession, specifying last date used/possessed
- Frequency of use/possession
- Intentions regarding future use/possession
- City and state (or country if not in U.S.) where used/possessed
- Circumstances surrounding use/possession

DETAILED INSTRUCTIONS

All items must be completed in their entirety.

ITEM 20 - DRUG/ALCOHOL USE AND MENTAL HEALTH. (Continued)

IF MORE THAN ONE DRUG HAS BEEN USED/POSSESSED, PROVIDE THE INFORMATION ABOVE FOR EACH DRUG SEPARATELY.

b. **Drug Activity.** The drugs referred to are again those listed on the Attachment, or any other mind-altering substances. If "Yes," you must indicate on the NAQ the activity (or activities) in which you were involved by circling "purchase," "manufacture," "trafficking," "production," or "sale," and provide, in Item 14, the following details:

- Drug(s) involved
- Date(s) of Activity
- Number of times you participated in activity
- Current activity
- Intentions regarding future activity
- City and state (or country if not in U.S.) where activity took place
- Circumstances surrounding activity

AGAIN, IF MORE THAN ONE DRUG HAS BEEN USED/POSSESSED, PROVIDE THE INFORMATION ABOVE FOR EACH DRUG SEPARATELY.

c. **Abuse of Prescribed Drugs.** The drugs referred to are any medication prescribed either for you or for someone else by a licensed physician, which you abused by taking other than as prescribed. If "Yes," please provide, in Item 14, the following details:

- Drug(s) involved
- Date(s) of use, specifying last date used
- Frequency of use
- Intentions regarding future use
- City and state (or country if not in U.S.)
- Circumstances surrounding use and/or any other involvement such as illegal sale or distribution

AGAIN, IF MORE THAN ONE DRUG IS INVOLVED, PROVIDE SPECIFIC INFORMATION FOR EACH DRUG SEPARATELY.

d. **Alcohol Abuse.** If "Yes," you must indicate on the NAQ the activity (or activities) in which you were involved by circling "loss of a job," "disciplinary action," "arrest by police," or "any alcohol-related treatment or counseling." Explain, in Item 14, the circumstances of each incident as follows:

- If loss of a job, provide name and address of employer, and dates of employment

ITEM 20 - DRUG/ALCOHOL USE AND MENTAL HEALTH. (Continued)

- If disciplinary action, provide dates, locations and final disposition of each incident
- If arrested by police, provide information as in item 18 d. If already explained, state, "Refer to item 18 b."
- If you received treatment or counseling for alcoholism or alcohol abuse, provide name and address of treatment/counseling facility, dates of treatment/counseling, name and office address of physician/counselor or other individual who provided treatment/counseling

e and f. **Mental Health.** If "Yes" is answered to either e or f, provide, in Item 14, the following information:

- Exact problem (including name of disorder, if known)
- Name and address of primary physician, therapist, counselor, or other mental health professional who treated you or from whom you received counseling
- Date(s) of treatment/counseling
- If treatment/counseling is still continuing, so indicate and provide frequency of visits
- Name and address of any hospital, clinic, and/or agency where treated/counseled as an inpatient
- Date(s) of hospitalization and/or inpatient treatment/counseling

ITEM 21 - ORGANIZATIONS

a and b. If "Yes" is answered, provide the full name of the organization and the circumstances of your membership or affiliation. Include in your statement the dates, places, offices, positions, or credentials now or formerly held. If associations have been with individuals who are members of the described organizations, then list the individuals and the organization with which they were or are affiliated.

c. List all organizations in which you hold or have held membership since age 16. You may omit labor unions, political parties, religious organizations, and those referred to in a and b above. Provide the following information:

- (1) **Name.** Provide the full name(s) of the organization(s) (do not use initials or abbreviations)
- (2) **Address.** List number and street, city, and state (or country if other than the U.S.)
- (3) **Type.** Identify the type of organization (e.g. social, fraternal, etc.)
- (4) and (5) **From - To.** Provide the inclusive dates for membership in terms of year and month using the last two digits for the month (e.g. October 1979 would be entered as 7910)

DETAILED INSTRUCTIONS

All items must be completed in their entirety.

ITEM 22 - SECURITY CLEARANCE.

a. Have you ever held a security clearance? Mark appropriate block. If you have held a contractor-granted CONFIDENTIAL security clearance, mark "Yes."

(1) Level List TOP SECRET, SECRET, or CONFIDENTIAL

(2) Date Granted Enter the date the security clearance was granted

(3) Granted By Enter the name of the organization or activity that granted the security clearance

(4) Name of Employer Enter the name of the organization or contractor who was your employer at that time

ITEM 22 - SECURITY CLEARANCE. (Continued)

b. Have you ever had a security clearance denied, suspended, or revoked? Mark appropriate block. If "Yes," provide full details of the suspension, denial, or revocation in Item 14, to include level of security clearance, date of suspension, denial or revocation, as well as the name and address of the organization/ employer who took the action. NOTE: An administrative downgrade or termination of a security clearance is not a revocation.

ITEM 23 - CERTIFICATION BY PERSON COMPLETING FORM.

You should carefully review the form to ensure that you have answered all items and that the form is accurate in all details. You should fully understand the implication of certifying to a false statement. When you are satisfied that the form is complete, sign the original NAQ along with any attachments. Return the completed and signed form to the office that gave it to you.

DRUGS TO BE REPORTED WHEN COMPLETING DD FORM 398-2

NARCOTICS

DRUG NAME	OFTEN PRESCRIBED BRAND NAMES
Opium	Dover's Powder, Paregoric
Morphine	Morphine
Codeine	Codeine
Heroin	None
Meperidine (Pethidine)	Demerol, Pethadol
Methadone	Dolophine, Methadone, Methadose
Other Narcotics	Dilaudid, Leritine, Numorphan, Percodan

DEPRESSANTS

DRUG NAME	OFTEN PRESCRIBED BRAND NAMES
Chloral Hydrate	Noctec, Somnos
Barbiturates	Amytal, Butisol, Nembutal, Phenobarbital, Seconal, Tuinal
Glutethimide	Doriden
Methaqualone	Optimal, Parest, Quaalude, Somnafac, Sopor
Tranquilizers	Equanil, Librium, Miltown, Serax, Tranxene, Valium
Other Depressants	Clonopin, Dalmane, Dormate, Noludar, Placidil, Valmid

STIMULANTS

DRUG NAME	OFTEN PRESCRIBED BRAND NAMES
Cocaine	Cocaine
Amphetamines	Benzedrine, Biphedamine, Desoxyn, Dexedrine
Phenmetrazine	Preludin
Methylphenidate	Ritalin
Other Stimulants	Bacarat, Cylert, Dixer, Ionamin, Plegine, Pondimin, Pre-State, Sanorex, Voranil

HALLUCINOGENS

DRUG NAME	OFTEN PRESCRIBED BRAND NAMES
LSD	None
Mescaline	None
Psilocybin-Psilocyn	None
MDA	None
PCP	Sernylan
Other Hallucinogens	None

CANNABIS

DRUG NAME	OFTEN PRESCRIBED BRAND NAMES
Marijuana	None
Hashish	None
Hashish Oil	None

DEPARTMENT OF DEFENSE
PERSONNEL SECURITY QUESTIONNAIRE (PSQ)
 DD FORM 398

CONTENTS

THE PSQ PACKAGE CONSISTS OF THE FOLLOWING:

- | | |
|--|--|
| 1 Privacy Act Statement

2 Authority for Release of Information and Records

3 DD Form 398, "Department of Defense Personnel Security Questionnaire" | 4 General Instructions

5 Detailed Instructions

6 Appendix E to Department of Defense Regulation S200.2 (DoD S200.2-R)

7 Listing of Reportable Drugs |
|--|--|

PLEASE BE SURE YOU HAVE ALL PARTS OF THE PACKAGE.

PRIVACY ACT STATEMENT

AUTHORITY

50 U.S.C. Sections 781-887, Internal Security Act of 1950; 5 U.S.C. Section 9101, Criminal history record information for national security purposes, Executive Order 9397, November 1943 (SSN), Numbering System for Federal Register Accounts Relating to Individual Persons; Executive Order 10450, Security Requirements for Government Employment, Executive Order 10865, Safeguarding Classified Information Within Industry, Executive Order 11935, Citizenship Requirements for Federal Employment; Executive Order 12333, United States Intelligence Activities, Executive Order 12356, National Security Information, and 5 U.S.C. Section 301, Department Regulations

PRINCIPAL PURPOSES:

To obtain background information for personnel security investigative and evaluative purposes to make security determinations to grant a security clearance, to allow access to classified information, sensitive areas, or equipment; or to permit assignment to sensitive national security positions. The data may later be used as part of a review process to evaluate continued eligibility for access to classified information. The Social Security Number will be used to verify identity and locate existing records.

ROUTINE USES:

To federal, state, local, or foreign law enforcement authorities if the record indicates, on its face or in conjunction with other records, a violation of law; to federal, state, or local government agencies if necessary to obtain information for a personnel security determination, to a requesting federal agency concerning its retaining, issuing a security clearance, or making a personnel security determination concerning assignment to or retention in a sensitive position, or letting a contract; to a congressional office in response to an inquiry made at the request of the individual; to foreign law enforcement, security, investigatory, or administrative authorities to comply with international agreements; to the Office of Personnel Management when necessary to carry out its personnel security functions; to the Department of Justice in pending or potential litigation to which the record is pertinent; to the General Services Administration and National Archives and Records Administration for records management purposes; to the Merit Systems Protection Board for use in administrative proceedings and investigations of possible prohibited personnel practices; to individuals and entities outside the Department of Defense and U.S. Government for counterintelligence activities authorized by federal law or executive order

DISCLOSURE:

Voluntary, however, failure to furnish the requested information may result in our being unable to complete your investigation, which could result in your not being considered for clearance, access, or assignment to sensitive duties. For contractor personnel, failure to furnish information may result in administrative termination of any existing Industrial Security Clearance to include a contractor-granted clearance

AUTHORITY FOR RELEASE OF INFORMATION AND RECORDS

I have been provided a Privacy Act Statement advising me that certain information is required to assist the Department of Defense in making a security determination concerning me and that execution of this form is voluntary. The information will be used for the purpose of determining my qualification for employment with the Federal Government, service in the Armed Forces, or access to classified information.

I therefore authorize any duly accredited representative of the Department of Defense, including those from the Defense Investigative Service, to obtain any information relating to my activities from individuals, schools, residential management agents, employers, criminal justice agencies, financial or lending institutions, credit bureaus, consumer reporting agencies, retail business establishments, medical institutions, hospitals or other repositories of medical records. This information may include, but is not limited to, my academic, residential, achievement, performance, attendance, personal history, disciplinary, criminal history record, arrest, conviction, medical, psychiatric/psychological, and financial and credit information.

I further authorize the Defense Investigative Service and any other authorized Department of Defense agency, to request criminal history record information about me from criminal justice agencies for the purpose of determining my eligibility for access to classified information, or assignment to, or retention in, sensitive national security duties, in accordance with 5 U.S.C. 9101. I understand that I may request a copy of such records as may be available to me under the law.

I direct you to release such information upon request of the duly accredited representative of any authorized Department of Defense agency regardless of any agreement I may have made with you previously to the contrary.

I have been advised that the original of this authorization will be placed on file with the Department of Defense. This authorization will expire in five (5) years or upon the termination of my affiliation with the Department of Defense, whichever is sooner.

a. TYPED NAME (LAST, First, Middle Initial)		b. OTHER NAMES USED	
c. DATE OF BIRTH (YYMMDD)	d. SOCIAL SECURITY NUMBER	e. CURRENT HOME ADDRESS (Street, City, State and Zip Code)	
f. HOME TELEPHONE NUMBER (include Area Code)			
g. SIGNATURE		h. DATE SIGNED (YYMMDD)	

DD Form 398, MAR 90 *Replaces all previous editions of DD Forms 49 398 and 2221, which are obsolete*

16. CHARACTER REFERENCES (List 3 good friends, colleagues, neighbors, etc. who together have known you for the entire period of investigation. Do not list anyone who is listed elsewhere on this form. See DETAILED INSTRUCTIONS.)					
A. Dates (From To)		B. Name (Last First Middle Initial)	D. Address (Number and Street apt. no., City, State and Zip Code)	E. Telephone No. (Include Area Code)	
(1) From	(2) To	C. Association (Friend, etc.)		(1) Home	(2) Office

17. CREDIT REFERENCES (Complete this item only if you have worked on a cumulative basis for a period in excess of 6 months out of the last 5 years. List firms, institutions, and/or individuals (other than relatives) who have extended credit to you during that time period. See DETAILED INSTRUCTIONS.)					
A. Name	B. Account Number	C. Number and Street	D. City	E. State	F. Zip Code

18. REMARKS (You may provide any additional information which you feel may have a bearing or impact on your security eligibility which has not been specifically asked for on this form.)

19. CERTIFICATION BY PERSON COMPLETING FORM: I certify that the entries made by me are true, complete, and accurate to the best of my knowledge and belief and are made in good faith. I understand that a knowing and willful false statement on this form can be punished by fine or imprisonment or both. (See U.S. Code, Title 18, Section 1001.)			
a. Typed Name (Last First Middle Initial)	b. Social Security No.	c. Signature	d. Date Signed (Month/Day/Year)

Answers to questions in Items 20 through 24 are **NOT** limited to the last 5, 10, or 15 years, but pertain to your entire life. (See DETAILED INSTRUCTIONS.)

20. CREDIT HISTORY

(If "YES" answers must be explained in accordance with DETAILED INSTRUCTIONS.)

- Yes No
- a. Have you ever filed a petition under any chapter of the bankruptcy code (to include Chapter 13)?
- b. Have you ever had your wages garnished or anything repossessed?
- c. Have you ever had a lien placed upon your property for failing to pay taxes?
- d. Do you have any judgments against you which you have not paid?
- e. Are you now or have you been significantly delinquent on debts? (Paid more than 120 days from scheduled payment due date)

21. ARRESTS

(If "YES" answers must be explained in accordance with DETAILED INSTRUCTIONS.)

a. You must list all arrest information regardless of whether you have previously listed or disclosed this information or whether the record in your case has been "sealed", expunged, or otherwise stricken from the court record. You must also include all court, martial or non judicial punishment (Article 15 UCMJ or Captain's Mast).

b. The only exceptions are for a state conviction under the Federal Controlled Substances Act (21 U.S.C. 844 or 18 U.S.C. Section 3601) (See DETAILED INSTRUCTIONS).

c. You may exclude minor traffic violations for which a fine no more than \$100 or less was imposed, unless alcohol or drug related.

- Yes No
- a. Have you ever been arrested, charged, cited, held, or detained by Federal, State, or other law enforcement or juvenile authorities regardless of whether the charge was dropped or dismissed or you were found not guilty?

b. List details of "Yes" answers

(1) Date (YYYYMMDD)	(2) Nature of Offense or Violation	(3) Name and Location of Law Enforcement Agency (City and State)	(4) Name and Location of Court/Magistrate (City and State)	(5) Penalty Imposed or Other Disposition in Each Case

22. DRUG/ALCOHOL USE AND MENTAL HEALTH (If "YES" answers must be explained in accordance with DETAILED INSTRUCTIONS.)

- Yes No
- a. Have you ever tried or used or possessed any narcotic (to include heroin or cocaine), depressant (to include quaaludes), stimulant, hallucinogen (to include LSD or PCP), or cannabis (to include marijuana or hashish), or any mind-altering substance (to include glue or paint), even one-time or on an experimental basis, except as prescribed by a licensed physician?
- b. Have you ever been involved in the illegal purchase, manufacture, trafficking, production, or sale of any narcotic, depressant, stimulant, hallucinogen, or cannabis?
- c. Have you ever misused or abused any drug prescribed by a licensed physician for yourself or for someone else?
- d. Has your use of alcoholic beverages (such as liquor, beer, wine) ever resulted in the loss of a job, disciplinary action, arrest by police, or any alcohol-related treatment or counseling (such as for alcohol abuse or alcoholism)?
- e. Have you ever been treated for a mental, emotional, psychological, or personality disorder/condition/problem?
- f. Have you ever consulted or been counseled by any mental health professional?

23. ORGANIZATIONS

(If "YES" answers must be explained in accordance with DETAILED INSTRUCTIONS.)

- Yes No
- a. Are you now or have you ever been a member of the Communist Party or any Communist organization?
- b. Are you now or have you ever been affiliated with any organization, association, movement, group, or combination of persons which:
- (1) Administers the membership of your constitutional form of government?
- (2) Administers or approves the nomination or lists of force, violence, coercion, or intimidation in any persons their rights under the Constitution of the U.S.?
- (3) Seeks to alter the form of government of the United States by force, violence, or other unconstitutional means?
- (4) Administers or engages in the disruption or halting of U.S. government activities through force, violence, or infiltration of the government service?

c. List all organizations in which you hold or have held membership since age 16 (You may omit labor unions, political parties, religious organizations, and those referred to in 23 a and b.)

(1) Name (Do not abbreviate)	(2) Address (Number and Street, City, State, Zip Code)	(3) Type	(4) From (YYYYMM) (5) To (YYYYMM)

24. SECURITY CLEARANCE

- Yes No
- a. Have you ever held a security clearance, to include a contractor-granted Confidential? (If "YES" give details below.)
- (1) Level (2) Date Granted (YYYYMMDD) (3) Granted By (4) Name of Employer
- b. Have you ever had a security clearance denied, suspended or revoked? (If "YES" give details in Item 18.)

25. CERTIFICATION BY PERSON COMPLETING FORM

I certify that the entries made by me are true, complete, and accurate to the best of my knowledge and belief and are made in good faith. I understand that a knowing and willful false statement on this form can be punished by fine or imprisonment or both. (See U.S. Code, Title 18, Section 1001.)

a. Typed Name (Last, First, Middle Initial)	b. Social Security No.	c. Signature	d. Date Signed (YYYYMMDD)

Standard Form 86
Revised December 1990
U.S. Office of Personnel Management
FPM Chapter 732

Form approved
OMB No. 3206-0007
NSN 7540-00-634-4036
86-110

Questionnaire for Sensitive Positions (For National Security)

Read this information carefully. Follow the instructions fully or we cannot process your form.

Why do we need the information you will give us and how will we use it?

The U.S. Government has conducted background investigations for over 50 years. It does this to establish that applicants for or incumbents in sensitive positions, either employed by the Government or working for the Government under contract, are eligible for a required security clearance or for performing sensitive duties. We use the information from this form primarily as the basis for an investigation that will be used to determine your eligibility for a national security position.

The information you give us is for Official Use Only; we will protect it from unauthorized disclosure. Authorized disclosures include the Privacy Act Routine Uses shown on this form. The information you provide in response to question 25a on use of illegal drugs will not be provided for use in any criminal proceedings against you.

Giving us the information we ask for is voluntary. However, we may not be able to complete your investigation, or complete it in a timely manner, if you don't give us each item of information we request. This may affect your placement or clearance prospects.

What authority do we have to ask you for the information requested on this form?

The U.S. Government is authorized to ask for this information under Executive Order 10450, section 2165 of title 42, U.S. Code; parts 5, 732, and 736 of Title 5, Code of Federal Regulations, and other statutes authorizing background investigations. We ask for your Social Security number to keep our records accurate, because other people may have the same name and birth date. Executive Order 9397 also asks Federal agencies to use this number to help identify individuals in agency records.

What is the investigative process?

Background investigations for national security are conducted to develop information to show whether or not a person is reliable, trustworthy, of good conduct and character, and loyal to the United States. The information you provide on this form, including any specific agency instructions of Question 14c., and any other special instructions, is confirmed by investigation. Your current employer must be contacted, even if you indicated on your SF 171, or other form, that you do not want the present employer contacted. In addition to the questions on this form, inquiry also is made about a person's adherence to security requirements, mental or health disorders, dishonest conduct, sexual misconduct, vulnerability to blackmail or coercion, falsification, misrepresentation and any other behavior, activities, or associations that tend to show the person is not reliable, trustworthy, or loyal.

An interview with you is a normal part of the investigative process. This Personal Subject Interview is generally the first step in the investigation, and is conducted under oath, affirmative, or unsworn declaration. It provides you the opportunity to update, clarify, and explain more completely information on your form, which often helps to complete your investigation faster.

If your investigation requires a Personal Subject Interview, you will be contacted in advance by telephone or mail to arrange a time and location for the interview. It is important that the interview be conducted as soon as possible after you are contacted. Postponements will delay the processing of your investigation. Declining an interview may result in your investigation being delayed or canceled.

You will be asked to bring identification with your picture on it, such as a valid State driver's license, to the interview. There are other documents you may be asked to bring to verify your identity as well. These include: documentation of any legal name change; Social Security card; and/or birth certificate.

Documents that verify any significant claims or activities may also be requested, for example: alien registration; naturalization certificate; originals or certified copies of college transcripts or degrees; high school diploma; professional license(s) or certificate(s); military discharge certificate(s) (DD Form 214); marriage certificate(s); passport; and/or business license(s). You also may be asked to bring documents that pertain to information provided in your answers to questions on the form or other matters requiring specific attention. These matters include: termination or discharge from employment; delinquent loans or taxes; bankruptcy, judgments, liens, or other financial obligations; and arrests, convictions, probation and/or parole.

Who makes a final determination?

Final determination on your eligibility for a national security position and your being granted a clearance is the responsibility of the OPM or the Federal agency that requested your investigation. You may be provided the opportunity to personally explain, refute, or clarify any information before a final decision is made.

How is this form organized?

This form has two parts. Part 1 asks for background information, including where you have lived, gone to school, and worked. Part 2 asks about your activities and such matters as firings from a job, criminal history record, use of illegal drugs and alcohol consumption. In answering Part 2, you should keep in mind that your answers to questions are considered together with the information obtained in the investigation to reach an appropriate adjudication for a sensitive position.

What are the penalties for inaccurate or false statements?

The U.S. Criminal Code provides that knowingly falsifying or concealing a material fact is a felony which may result in fines of up to \$10,000, or 5 years imprisonment, or both. In addition, Federal agencies generally fire, do not grant clearance, or disqualify individuals who have materially and deliberately falsified these forms, and this remains a part of your permanent record for future placements. Because the position for which you are being considered is a sensitive one, your trustworthiness is a very important consideration in deciding your eligibility for security clearance. Your prospects of placement or clearance are better if you answer all questions truthfully and completely. In the course of an interview with a Federal official you will have

adequate opportunity to explain any information you give us on the form and make your comments part of the record.

How is the SF 171 used with this form?

For competitive civil service positions, a copy of the Application for Federal Employment (SF 171), or a form provided to you, will be attached to the SF 86. For certain other and contractor positions, the SF 171 is not required. You will submit to the office assisting you.

How is this form filled out?

1. Follow the instructions of the person who gave you the form and any other supplementary information furnished by that person to assist you in completion of the form. Find out how many copies of the form you are to turn in. You must sign and date, in ink, the original and each copy you submit.

2. You will need a continuation sheet(s), SF 86A, if in the last 15 years you have lived in more than 6 residences, attended more than 3 schools, or had more than 7 employments/self-employment/unemployment(s).

If additional space is needed, use a blank piece of paper. Each blank piece of paper you use must contain your name and Social Security number at the top of the page.

3. Type or legibly print your answers. We cannot accept your form if it is not legible.

4. You must use the State codes (abbreviations) listed in the box below when you fill out your form.

5. The 5-digit postal ZIP codes are needed to speed the processing of your investigation. The office that provided you with the form will assist you in completing the ZIP codes.

6. Whenever "City (Country)" is shown in an address block, also provide in that block the name of the country when the address is outside the United States.

7. When providing dates, you may use numbers 1-12 to indicate months if you don't believe you have enough space to write the month; and for the same reason, for year you may show the last two numbers in the year. For example, June 8, 1967, could be shown as 6/8/67, or January 1984 could be shown as 1/84.

If you have any questions, call the office that gave you the form. Be sure to sign and date the certification statement on page 9 and complete the release on page 10. Any forms that are not completed according to these instructions will be returned. This will delay the processing of your case.

Alabama	AL	Alaska	AK	Arizona	AZ	Arkansas	AR	California	CA	Colorado	CO	Connecticut	CT	Delaware	DE	Florida	FL	Georgia	GA	Hawaii	HI	Idaho	ID	Illinois	IL	Indiana	IN	Iowa	IA	Kansas	KS	Kentucky	KY	Louisiana	LA	Maine	ME	Maryland	MD	Massachusetts	MA	Michigan	MI	Minnesota	MN	Mississippi	MS	Missouri	MO	Montana	MT	Nebraska	NE	Nevada	NV	New Hampshire	NH	New Jersey	NJ	New Mexico	NM	New York	NY	North Carolina	NC	North Dakota	ND	Ohio	OH	Oklahoma	OK	Oregon	OR	Pennsylvania	PA	Rhode Island	RI	South Carolina	SC	South Dakota	SD	Tennessee	TN	Texas	TX	Utah	UT	Vermont	VT	Virginia	VA	Washington	WA	West Virginia	WV	Wisconsin	WI	Wyoming	WY	American Samoa	AS	Dist. of Columbia	DC	Guam	GU	Northern Mariana	CM	Puerto Rico	PR	Trust Territory	TT	Virgin Islands	VI
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PRIVACY ACT ROUTINE USES

This record and information in this record may be used in disclosing information:

- To designated officers and employees of agencies, offices, and other establishments in the executive, legislative, and judicial branches of the Federal Government, having a need to evaluate qualifications, suitability, and loyalty to the United States Government, and/or a security clearance or access determination.
- To designated officers and employees of agencies, offices, and other establishments in the executive, legislative, and judicial branches of the Federal Government, and the District of Columbia Government, when such agency, office, or establishment conducts an investigation of the individual for purposes of granting a security clearance, or for the purpose of making a determination of qualifications, suitability, or loyalty to the United States Government, or access to classified information in restricted areas.
- To designated officers and employees of agencies, offices, and other establishments in the executive, judicial, or legislative branches of the Federal Government, having the responsibility to grant clearances, to make a determination regarding access to classified information or restricted areas, or to evaluate qualifications, suitability, or loyalty to the United States Government in connection with performance of a service to the Federal Government under a contract or other agreement.
- To intelligence agencies for use in intelligence activities.
- To any source from which information is requested in the course of an investigation, to the extent necessary to identify the individual, inform the source of the nature and purpose of the investigation, and to identify the type of information requested.
- To the Federal, State, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order where:

there is an indication of a violation or potential violation of civil or criminal law or regulation.

- To an agency, office, or other establishment in the executive, legislative, or judicial branches of the Federal Government, or the District of Columbia Government, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the conducting of a security or suitability investigation of an individual, the classifying of jobs, the awarding of a contract, or the issuance of a license, grant, or other benefit by the requesting agency.
- To Federal agencies as a data source for management information through the production of summary descriptive statistics and analytical studies in support of the functions for which the records are maintained or for related studies.
- To a congressional office in response to an inquiry made at the request of that individual.
- In litigation before a court or in an administrative proceeding being conducted by a Federal agency.
- To the National Archives and Records Administration for records management inspections.
- To the Office of Management and Budget in connection with private law legislation.
- To respond to a request for discovery or for appearance of a witness, and
- To the Mint Systems Protection Board, the Office of Special Counsel, the Equal Employment Opportunity Commission, or the Federal Labor Relations Authority, in connection with functions vested in those agencies.

Public Burden Information

Public burden reporting for this collection of information is estimated to vary from 30 minutes to 180 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to Records and Forms Management Officer, U.S. Office of Personnel Management, 1900 E Street, N.W., Room 6410 Washington, D.C. 20415, and to the Office of Management and Budget, Paperwork Reduction Project (3208-0007), Washington, D.C. 20503.

Do not send your completed form to the addresses in this box.

Standard Form 86
Revised December 1990
U.S. Office of Personnel Management
FPM Chapter 732

QUESTIONNAIRE FOR SENSITIVE POSITIONS (For National Security)

Form approved
OMB No. 3206-0007
NSN 7540-00-634-4036
86-110

Part 1

FORM
USE
ONLY

Agency Use Only (Complete Items A through P using instructions in FPM Supplement 296-33)

A Type of Investigation ☐ B Extent Coverage ☐ C Sensitivity Level ☐ D Access ☐ E Nature of Action Code ☐ F Date of Action Month ☐ Day ☐ Year ☐

G Geographic Location ☐ H Position Code ☐ I Position Title ☐

J ☐ K Location of Official Personnel Folder ☐ L ☐ M Location of Security Folder ☐ N OFAC ALC Number ☐ O Accounting Data and/or Agency Case Number ☐

P Requesting Official Name and Title ☐ Signature ☐ Telephone Number ☐ Date ☐

Persons completing this form should begin with the questions below. Please type or print your answers.

1 FULL NAME ☐ 2 DATE OF BIRTH ☐
Last Name ☐ First Name ☐ Middle Name ☐ If, Jr., Sr., etc. ☐ Month ☐ Day ☐ Year ☐

3 PLACE OF BIRTH ☐ 4 SOCIAL SECURITY NUMBER ☐
City ☐ County ☐ State ☐ Country (if not in the United States) ☐

5 OTHER NAMES USED ☐
Name ☐ To ☐ Name ☐ To ☐
Name ☐ To ☐ Name ☐ To ☐

6 OTHER IDENTIFYING INFORMATION ☐
Height (feet and inches) ☐ Weight (pounds) ☐ Hair Color ☐ Eye Color ☐ Sex (mark one box) ☐ Female ☐ Male ☐

7 TELEPHONE NUMBERS ☐
Work (include Area Code and extension) ☐ Home (include Area Code) ☐
() Day ☐ () Night ☐ () Day ☐ () Night ☐

8 CITIZENSHIP ☐
a Mark the box at the right that applies to you and follow the instructions next to the box you marked ☐
I am a U.S. citizen by birth in the U.S. ☐ Answer items b and d ☐
I am a U.S. citizen but I was NOT born in the U.S. ☐ Answer items b, c, and d ☐
I am not a U.S. citizen ☐ Answer items b and e ☐
b Your Mother's Maiden Name ☐

C UNITED STATES CITIZENSHIP If you are a U.S. Citizen but were not born in the U.S. provide information about one or more of the following proofs of your citizenship

Naturalization Certificate (Where were you naturalized?) ☐
Country ☐ City ☐ State ☐ Certificate Number ☐ Month/Day/Year Issued ☐

Citizenship Certificate (Where was the certificate issued?) ☐
City ☐ State ☐ Certificate Number ☐ Month/Day/Year Issued ☐

State Department Form 240 - Report of Birth Abroad of a Citizen of the United States ☐

Give the date the form was prepared and give an explanation if needed ☐
Month/Day/Year ☐ Explanation ☐

U.S. Passport ☐
This may be either a current or previous U.S. Passport ☐
Passport Number ☐ Month/Day/Year Issued ☐

d DUAL CITIZENSHIP If you are (or were) a dual citizen of the United States and another country, provide the name of that country in the space to the right ☐

e ALIEN If you are an alien, provide the following information ☐

Place You Entered the United States ☐
City ☐ State ☐ Date You Entered U.S. ☐
Month ☐ Day ☐ Year ☐ Alien Registration Number ☐ Country of Citizenship ☐

9 WHERE YOU HAVE LIVED

Fill in your full address for every place you have lived beginning with the present (#1) and working backward 15 years.

- If you attended school away from your permanent residence, list the address you lived at while attending school.
- For any address in the past 3 years:
 - List a person who knew you at that address, preferably someone who still lives in that area.
 - If address listed is "General Delivery," a Rural Route, or Star Route, provide directions for locating the residence on an attached continuation sheet, and show the block #.

#1	Month/Year	Month/Year	Street Address	Apt. #	City (Country)	State	ZIP Code
Present	To						
Name of Person Who Knows You			Street Address	Apt. #	City (Country)	State	ZIP Code
							Telephone Number
							()
#2	Month/Year	Month/Year	Street Address	Apt. #	City (Country)	State	ZIP Code
To							
Name of Person Who Knows You			Street Address	Apt. #	City (Country)	State	ZIP Code
							Telephone Number
							()
#3	Month/Year	Month/Year	Street Address	Apt. #	City (Country)	State	ZIP Code
To							
Name of Person Who Knows You			Street Address	Apt. #	City (Country)	State	ZIP Code
							Telephone Number
							()
#4	Month/Year	Month/Year	Street Address	Apt. #	City (Country)	State	ZIP Code
To							
Name of Person Who Knows You			Street Address	Apt. #	City (Country)	State	ZIP Code
							Telephone Number
							()
#5	Month/Year	Month/Year	Street Address	Apt. #	City (Country)	State	ZIP Code
To							
Name of Person Who Knows You			Street Address	Apt. #	City (Country)	State	ZIP Code
							Telephone Number
							()
#6	Month/Year	Month/Year	Street Address	Apt. #	City (Country)	State	ZIP Code
To							
Name of Person Who Knows You			Street Address	Apt. #	City (Country)	State	ZIP Code
							Telephone Number
							()

10 WHERE YOU WENT TO SCHOOL

Fill in information about schools you have attended, beyond Junior High School, beginning with the most recent (#1) and working backward 15 years. Also list College or University degrees received beyond 15 years.

- For schools you attended in the past 3 years, list a person who knew you at school (such as an instructor or a student).
- For correspondence schools and extension classes, list records location address.
- In the "Code" block, use one of these codes: 1 - High School 2 - College/University 3 - Vocational/Trade School

#1	Month/Year	Month/Year	Code	Name of School	Degree/Diploma/Other (show each degree and date received if Code 2)	Month/Year
To						
Street Address and City (Country) of School						State ZIP Code
						()
Name of Person Who Knew You				Street Address and City (Country)	State ZIP Code	Telephone Number
						()
#2	Month/Year	Month/Year	Code	Name of School	Degree/Diploma/Other (show each degree and date received if Code 2)	Month/Year
To						
Street Address and City (Country) of School						State ZIP Code
						()
Name of Person Who Knew You				Street Address and City (Country)	State ZIP Code	Telephone Number
						()
#3	Month/Year	Month/Year	Code	Name of School	Degree/Diploma/Other (show each degree and date received if Code 2)	Month/Year
To						
Street Address and City (Country) of School						State ZIP Code
						()
Name of Person Who Knew You				Street Address and City (Country)	State ZIP Code	Telephone Number
						()

Enter your Social Security Number before going to the next page



11 YOUR EMPLOYMENT ACTIVITIES

Fill in your employment activities, beginning with the present (#1) and working backward 15 years. INCLUDE:

- all full-time work
- all part-time work
- all paid work
- active military duty
- self-employment
- all periods of unemployment

IN THE NUMBERED ACTIVITY SECTION USE ONE OF THESE CODES IN THE CODE BLOCK:

- | | | | |
|-----------------------------------|--|--|-----------|
| 1 - Active military duty stations | 5 - State Government (Non-Federal) employment | 7 - Unemployment (Enter name of person who can verify) | 9 - Other |
| 2 - National Guard/Reserve | 6 - Self-employment (Enter business name and/or name of person who can verify) | 8 - Federal Contractor (list Contractor, not Federal agency) | |
| 3 - U.S.P.H.S. Commissioned Corps | | | |
| 4 - Other Federal employment | | | |

FOR EACH ACTIVITY SECTION, provide information requested. For example, if you had worked at XY Plumbing in Denver, CO, for 3 separate periods of time, you would enter dates and information concerning the most recent period of employment first, and provide dates, position titles, and supervisors for the two previous periods of employment in the appropriate blocks below that information. (For locations outside the U.S. show city and country.)

#1	Month/Year	Month/Year	Code	Employer's Name	Military Service/Unemployment or Self-Employment	Venue	Your Position Title
Present	To						
Employer's Venues Street Address				City (Country)		State	ZIP Code Telephone Number ()
Street Address of Job Location (if different than Employer's Address)				City (Country)		State	ZIP Code Telephone Number ()
Supervisor's Name & Street Address (if different than Job Location)				City (Country)		State	ZIP Code Telephone Number ()

PREVIOUS PERIODS OF THE SAME ACTIVITY AND LOCATION - IF CONTINUATION SHEET IS USED, SHOW BLOCK #

Month/Year	Month/Year	Your Position Title & Supervisor's Name	Month/Year	Month/Year	Your Position Title & Supervisor's Name
To			To		
To			To		

#2	Month/Year	Month/Year	Code	Employer's Name	Military Service/Unemployment or Self-Employment	Venue	Your Position Title
	To						
Employer's Venues Street Address				City (Country)		State	ZIP Code Telephone Number ()
Street Address of Job Location (if different than Employer's Address)				City (Country)		State	ZIP Code Telephone Number ()
Supervisor's Name & Street Address (if different than Job Location)				City (Country)		State	ZIP Code Telephone Number ()

PREVIOUS PERIODS OF THE SAME ACTIVITY AND LOCATION - IF CONTINUATION SHEET IS USED, SHOW BLOCK #

Month/Year	Month/Year	Your Position Title & Supervisor's Name	Month/Year	Month/Year	Your Position Title & Supervisor's Name
To			To		
To			To		

#3	Month/Year	Month/Year	Code	Employer's Name	Military Service/Unemployment or Self-Employment	Venue	Your Position Title
	To						
Employer's Venues Street Address				City (Country)		State	ZIP Code Telephone Number ()
Street Address of Job Location (if different than Employer's Address)				City (Country)		State	ZIP Code Telephone Number ()
Supervisor's Name & Street Address (if different than Job Location)				City (Country)		State	ZIP Code Telephone Number ()

PREVIOUS PERIODS OF THE SAME ACTIVITY AND LOCATION - IF CONTINUATION SHEET IS USED, SHOW BLOCK #

Month/Year	Month/Year	Your Position Title & Supervisor's Name	Month/Year	Month/Year	Your Position Title & Supervisor's Name
To			To		
To			To		

Enter your Social Security Number before going to the next page

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YOUR EMPLOYMENT ACTIVITIES (Continued)

Month/Year	Month/Year	Code	Employer's Name (Military Service/Unemployment or Self-Employment/Volunteer)	Your Position Title		
#4	To					
Employer's/Volunteer's Street Address			City (Country)	State	ZIP Code	Telephone Number
Street Address of Job Location (if different than Employer's Address)			City (Country)	State	ZIP Code	Telephone Number
Supervisor's Name & Street Address (if different than Job Location)			City (Country)	State	ZIP Code	Telephone Number

PREVIOUS PERIODS OF THE SAME ACTIVITY AND LOCATION - IF CONTINUATION SHEET IS USED, SHOW BLOCK #

Month/Year	Month/Year	Your Position Title & Supervisor's Name	Month/Year	Month/Year	Your Position Title & Supervisor's Name
To			To		
To			To		

Month/Year	Month/Year	Code	Employer's Name (Military Service/Unemployment or Self-Employment/Volunteer)	Your Position Title		
#5	To					
Employer's/Volunteer's Street Address			City (Country)	State	ZIP Code	Telephone Number
Street Address of Job Location (if different than Employer's Address)			City (Country)	State	ZIP Code	Telephone Number
Supervisor's Name & Street Address (if different than Job Location)			City (Country)	State	ZIP Code	Telephone Number

PREVIOUS PERIODS OF THE SAME ACTIVITY AND LOCATION - IF CONTINUATION SHEET IS USED, SHOW BLOCK #

Month/Year	Month/Year	Your Position Title & Supervisor's Name	Month/Year	Month/Year	Your Position Title & Supervisor's Name
To			To		
To			To		

Month/Year	Month/Year	Code	Employer's Name (Military Service/Unemployment or Self-Employment/Volunteer)	Your Position Title		
#6	To					
Employer's/Volunteer's Street Address			City (Country)	State	ZIP Code	Telephone Number
Street Address of Job Location (if different than Employer's Address)			City (Country)	State	ZIP Code	Telephone Number
Supervisor's Name & Street Address (if different than Job Location)			City (Country)	State	ZIP Code	Telephone Number

PREVIOUS PERIODS OF THE SAME ACTIVITY AND LOCATION - IF CONTINUATION SHEET IS USED, SHOW BLOCK #

Month/Year	Month/Year	Your Position Title & Supervisor's Name	Month/Year	Month/Year	Your Position Title & Supervisor's Name
To			To		
To			To		

Month/Year	Month/Year	Code	Employer's Name (Military Service/Unemployment or Self-Employment/Volunteer)	Your Position Title		
#7	To					
Employer's/Volunteer's Street Address			City (Country)	State	ZIP Code	Telephone Number
Street Address of Job Location (if different than Employer's Address)			City (Country)	State	ZIP Code	Telephone Number
Supervisor's Name & Street Address (if different than Job Location)			City (Country)	State	ZIP Code	Telephone Number

PREVIOUS PERIODS OF THE SAME ACTIVITY AND LOCATION - IF CONTINUATION SHEET IS USED, SHOW BLOCK #

Month/Year	Month/Year	Your Position Title & Supervisor's Name	Month/Year	Month/Year	Your Position Title & Supervisor's Name
To			To		
To			To		

Enter your Social Security Number before going to the next page



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12 PEOPLE WHO KNOW YOU WELL

List two people who know you well and live in the United States.

- Don't list spouse, other relatives, or former spouses

* Try not to list anyone mentioned in item 9, 10, or 11.

01	Name	Number Years Known	Telephone Number
	Home Address	City (Country)	Day () or Night () State ZIP Code
02	Name	Number Years Known	Telephone Number
	Home Address	City (Country)	Day () or Night () State ZIP Code

13 YOUR OUTSIDE ACTIVITIES

List any activities which you may wish to have considered as reflecting favorably on your reputation for leadership, responsibility, honesty, and integrity in the last 15 years (Response Optional)

Month Year Month Year		Activity	Location of Activity	
#1	To		City (Country)	State
#2	To			
#3	To			

14 YOUR FOREIGN ACTIVITIES

- a. Do you have any foreign property, business connections, or financial interests?
- b. Are you now or have you ever been employed by or acted as a consultant for a foreign government, firm, or agency?
- c. In the last 15 years, have you had continuing contact with a national of any foreign country designated by the agency instructing you to fill out this form? (NOTE: If the agency wants you to answer this question, it will provide you with a list of countries.)

If you answered "Yes" to a, b, or c, explain in the space below

Yes	No

15 FOREIGN COUNTRIES YOU HAVE VISITED

List foreign countries you have visited, beginning with the most current (#1) and working backward 15 years.

- * Do not include countries covered in items 9, 10, and 11.

- In the "Code" block, use one of these codes: 1 - Business

Monthly Year		Monthly Year	Grade	Country	Monthly Year		Monthly Year	Grade	Country
#1	To				#3	To			
#2	To				#4	To			

16 YOUR MILITARY HISTORY

- a. Have you served in the United States military? ☐ Yes ☐ No
- Have you served in the United States Merchant Marine? ☐ Yes ☐ No
- If your answer to both questions is "No," GO TO QUESTION 17
 - If your answer to either question is "Yes," GO TO b.

Starting with the most current (A1) and working backward

b. Starting with the most current (#1) and working backward, enter information for all periods of active service into the table below

- Mark "O" block for Officer or "E" block for Enlisted.

- In the "Code" block, use one of these codes:

1 - Air Force 2 - Army 3 - Navy 4 - Marine

1 - Air Force 2 - Army 3 - Navy 4 - Marine Corps 5 - Coast Guard 6 - Merchant Marine 7 - National Guard

Yes	No

[illegible]

Enter your Social Security Number before going to the next page

1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32	33	34	35	36	37	38	39	40	41	42	43	44	45	46	47	48	49	50	51	52	53	54	55	56	57	58	59	60	61	62	63	64	65	66	67	68	69	70	71	72	73	74	75	76	77	78	79	80	81	82	83	84	85	86	87	88	89	90	91	92	93	94	95	96	97	98	99	100	101	102	103	104	105	106	107	108	109	110	111	112	113	114	115	116	117	118	119	120	121	122	123	124	125	126	127	128	129	130	131	132	133	134	135	136	137	138	139	140	141	142	143	144	145	146	147	148	149	150	151	152	153	154	155	156	157	158	159	160	161	162	163	164	165	166	167	168	169	170	171	172	173	174	175	176	177	178	179	180	181	182	183	184	185	186	187	188	189	190	191	192	193	194	195	196	197	198	199	200	201	202	203	204	205	206	207	208	209	210	211	212	213	214	215	216	217	218	219	220	221	222	223	224	225	226	227	228	229	230	231	232	233	234	235	236	237	238	239	240	241	242	243	244	245	246	247	248	249	250	251	252	253	254	255	256	257	258	259	260	261	262	263	264	265	266	267	268	269	270	271	272	273	274	275	276	277	278	279	280	281	282	283	284	285	286	287	288	289	290	291	292	293	294	295	296	297	298	299	300	301	302	303	304	305	306	307	308	309	310	311	312	313	314	315	316	317	318	319	320	321	322	323	324	325	326	327	328	329	330	331	332	333	334	335	336	337	338	339	340	341	342	343	344	345	346	347	348	349	350	351	352	353	354	355	356	357	358	359	360	361	362	363	364	365	366	367	368	369	370	371	372	373	374	375	376	377	378	379	380	381	382	383	384	385	386	387	388	389	390	391	392	393	394	395	396	397	398	399	400	401	402	403	404	405	406	407	408	409	410	411	412	413	414	415	416	417	418	419	420	421	422	423	424	425	426	427	428	429	430	431	432	433	434	435	436	437	438	439	440	441	442	443	444	445	446	447	448	449	450	451	452	453	454	455	456	457	458	459	460	461	462	463	464	465	466
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Standard Form 86
Revised December 1990
U.S. Office of Personnel Management
FPM Chapter 732

**QUESTIONNAIRE FOR
SENSITIVE POSITIONS
(For National Security)**

Form approved:
OMB No. 3206-0007
NSN 7540-00-634-4036
86-110

Part 2

20 YOUR SELECTIVE SERVICE RECORD

- a. Are you a male born after December 31, 1959? If "No," go to 21. If "Yes," go to b.
b. Have you registered with the Selective Service System? If "Yes," provide your registration number. If "No," show the reason for your legal exemption below.

Yes	No

Registration Number _____ Legal Exemption Explanation _____

21 YOUR MILITARY RECORD

- a. Have you ever received other than an honorable discharge from the military? If "Yes," provide:
Date of Discharge (Month and Year): _____ Type of Discharge: _____
b. Have you ever been subject to court-martial or other disciplinary proceedings under the Uniform Code of Military Justice? If "Yes," list any disciplinary proceedings in the last 15 years and all courts-martial. (include non-judicial and Captain's mast, etc.)

Yes	No

Month/Year	Charge or Specification / Action Taken	Place (City and country if outside the United States)	State

22 YOUR EMPLOYMENT RECORD

Has any of the following happened to you in the last 15 years? If "Yes," begin with the most recent occurrence and go backward, providing date fired, quit, or left, and other information requested.

Yes	No

Use the following codes and explain the reason your employment was ended

- 1 - Fired from a job 3 - Left a job by mutual agreement following allegations of misconduct 5 - Left a job for other reasons under unfavorable circumstances
2 - Quit a job after being told 4 - Left a job by mutual agreement following allegations of unsatisfactory performance

Month/Year	Code	Specify Reason	Employer's Name and Address	State	ZIP Code

23 YOUR POLICE RECORD (Do not include anything that happened before your 16th birthday.)

- a. Have you ever been charged with or convicted of any felony offense?
b. Have you ever been charged with or convicted of a firearms or explosives offense?
c. Are there currently any charges pending against you for any criminal offense?
d. Have you ever been charged with or convicted of any offense(s) related to alcohol or drugs?
e. In the last 5 years, have you been arrested for, charged with, or convicted for any offense(s) not listed in response to a, b, c, or d above? (Leave out traffic fines of less than \$100.)

Yes	No

If you answered "Yes" to a, b, c, d, or e above, explain your answer(s) in the space provided.

Month/Year	Offense	Action Taken	Law Enforcement Authority or Court (City and country if outside the U.S.)	State	ZIP Code

24 YOUR MEDICAL RECORD

- a. Have you experienced problems on or off the job because of any emotional or mental condition?
b. Have you ever seen a health care professional for any of the types of problems mentioned above?

Yes	No

If you answered "Yes" to questions a or b, explain below

Month/Year	Month/Year	Explanation
To		
To		

Enter your Social Security Number before going to the next page

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25 ILLEGAL DRUGS AND ALCOHOL

- a. In the last 5 years, have you used, possessed, supplied, or manufactured any illegal drugs? When used without a prescription, illegal drugs include marijuana, cocaine, hashish, narcotics (opium, morphine, codeine, heroin, etc.), stimulants (cocaine, amphetamines, etc.), depressants (barbiturates, methaqualone, tranquilizers, etc.), hallucinogenics (LSD, PCP, etc.). (NOTE: The information you provide in response to this question will not be provided for use in any criminal proceedings against you.)

Yes	No
<input type="checkbox"/>	<input type="checkbox"/>

- b. Have you experienced problems (disciplinary actions, evictions, formal complaints, etc.) on or off a job from your use of illegal drugs or alcohol?

If you answered "Yes" to question a or b above, provide information relating to the types of substance(s), the nature of the activity, and any other details relating to your involvement with illegal drugs or alcohol. Include any treatment or counseling received.

Month/Year	Type of Substance	Explanation
To		
To		
To		

26 YOUR INVESTIGATIONS RECORD

- a. Has the United States Government ever investigated your background? If "Yes," use the codes that follow to provide the requested information below. If "Yes," but you can't recall the investigating agency and/or the security clearance received, enter "Other" agency code or clearance code, as appropriate, and "Don't know" or "Don't recall" under the "Other Agency" heading below. If your response is "No," or you don't know or can't recall if you were investigated and cleared, check the "No" box.

Yes	No
<input type="checkbox"/>	<input type="checkbox"/>

Codes for Investigating Agency

- 1 - Defense Department
2 - State Department
3 - Office of Personnel Management
4 - FBI
5 - Treasury Department
6 - Other (Specify)

Codes for Security Clearance Received

- 0 - Not Required
1 - Confidential
2 - Secret
3 - Top Secret
4 - Sensitive Compartmented Information
5 - O Sensitive
6 - O Non-sensitive
7 - L
8 - Other

Month/Year	Agency Code	Other Agency	Clearance Code	Month/Year	Agency Code	Other Agency	Clearance Code

- b. To your knowledge, have you ever had a clearance or access authorization denied, suspended, or revoked, or have you ever been debarred from government employment? If "Yes," give date of action and agency.

Yes	No
<input type="checkbox"/>	<input type="checkbox"/>

Month/Year	Department or Agency Taking Action	Month/Year	Department or Agency Taking Action

27 YOUR FINANCIAL RECORD

- a. In the last 5 years, have you, or a company over which you exercised some control, filed for bankruptcy, been declared bankrupt, been subject to a tax lien, or had legal judgment rendered against you for a debt? If you answered "Yes," provide date of initial action and other information requested below.

Yes	No
<input type="checkbox"/>	<input type="checkbox"/>

Month/Year	Type of Action	Name Action Occurred Under	Name/Address of Court or Agency Handling Case	State	ZIP Code

- b. Are you now over 180 days delinquent on any loan or financial obligation? Include loans or obligations funded or guaranteed by the Federal Government. (If an SF 171, Application for Federal Employment, will be attached, you do not need to repeat Federal Government delinquencies. See the instructions headed, "How is the SF 171 used with this form?")

Yes	No
<input type="checkbox"/>	<input type="checkbox"/>

If you answered "Yes," provide the information requested below:

Month/Year	Type of Loan or Obligation and Account #	Name/Address of Creditor or Obligor	State	ZIP Code

Enter your Social Security Number before going to the next page

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28 YOUR ASSOCIATION RECORD

- a. In the last 15 years, have you been an officer or a member or made a contribution to an organization dedicated to the violent overthrow of the United States Government and which engages in illegal activities to that end, knowing that the organization engages in such activities with the specific intent to further such activities?
- b. In the last 15 years, have you knowingly engaged in any act or activities designed to overthrow the United States Government by force? If you answered "Yes" to a or b, explain in the space below:

Yes	No

Continuation Space

Use the continuation sheet(s) (SF 86A) for additional answers to questions 9, 10, and 11. Use the space below to continue answers to all other questions and any information you would like to add. If more space is needed than what is provided below, use a blank sheet(s) of paper. Start each sheet with your name and Social Security Number. Before each answer, identify the number of the question.

After completing Parts 1 and 2 of this form and any attachments, you should review your answers to all questions to make sure the form is complete and accurate, and then sign and date the following certification and sign and date the release on page 10. If you attach an SF 171, Application for Federal Employment, make sure that it is updated and that any information added to the SF 171 is initialed and dated.

Certification That My Answers Are True

I read each question asked of me and understood each question. My statements on this form, and any attachments to this form, are true, complete, and correct to the best of my knowledge and belief and are made in good faith. I understand that a knowing and willful false statement on this form can be punished by fine or imprisonment or both.

Signature (Sign in ink)

Date

Enter your Social Security Number before going to the next page

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UNITED STATES OF AMERICA

AUTHORIZATION FOR RELEASE OF INFORMATION

Carefully read this authorization to release information about you, then sign and date it in ink.

I Authorize any investigator, special agent, or other duly accredited representative of the U.S. Office of Personnel Management, the Federal Bureau of Investigation, the Department of Defense, and any authorized Federal agency, to obtain any information relating to my activities from schools, residential management agents, employers, criminal justice agencies, retail business establishments, or other sources of information. This information may include, but is not limited to, my academic, residential, achievement, performance, attendance, disciplinary, employment history, and criminal history record information.

I Understand that, for financial or lending institutions, medical institutions, hospitals, health care professionals, and other sources of information, a separate specific release will or may be needed, and I may be contacted for such a release at a later date.

I Further Authorize the U.S. Office of Personnel Management, the Federal Bureau of Investigation, the Department of Defense, and any other authorized agency, to request criminal record information about me from criminal justice agencies for the purpose of determining my eligibility for, assignment to, or retention in, a sensitive position, in accordance with 5 U.S.C. 9101.

I Authorize custodians of records and sources of information pertaining to me to release such information upon request of the investigator, special agent, or other duly accredited representative of any Federal agency authorized above regardless of any previous agreement to the contrary.

I Understand that the information released by records custodians and sources of information is for official use by the Federal Government only for the purposes provided in this Standard Form 86, and may be redisclosed by the Government only as authorized by law.

Copies of this authorization that show my signature are as valid as the original release signed by me. This authorization is valid for two (2) years from the date signed.

Signature (Sign in ink)		Full Name (Type or Print Legibly)		Date Signed
Other Names Used			Social Security Number -	
Current Address (Street, City)			State ZIP Code	Home Telephone Number (Include Area Code) ()

Mr. EDWARDS. One of the witnesses spoke to the process that they go through when they ask you about mental health problems. Do they ask you to list the doctors? The hospitalizations? Does it ask you if you have been mentally ill?

Mr. BOWERS. Mr. Chairman, the Department of Defense actually has rather detailed instructions which I do not have with me. My recollection is it is a—sort of an ideal cross-examination. Tell me all your mental health problems in your entire life. It details some things; in some places it lists sort of specific mental illnesses. The door is generally open there. There is a requirement to disclose everything. It is hard to narrow it down.

It is purposely vague in order to encompass everything over an entire life.

Mr. EDWARDS. Do you have hallucinations? Do you sleep well? Questions like that?

Mr. BOWERS. I know it inquires about hallucinations. I am hesitant to go forward before you and speculate as to what else it says. I apologize for not having it with me.

Mr. EDWARDS. How about personal questions about, say, your sex life? Are we past the stage of asking about that now? Whether or not you are a homosexual?

Mr. BOWERS. The way the sexual question would come up was if a person was suffering stress due to sexual dysfunction or marital discord that sort of thing. If that resulted in stress for an individual, he went to a mental health counselor, that would be required to be disclosed because if they saw a mental health counselor, they have to disclose why. A mental health counselor is not defined.

Mr. EDWARDS. Have you ever consulted a psychiatrist? Is that a question?

Mr. MELROSE. Mr. Chairman, if I might quote from the form 86 here which I will be happy to leave with you. Question 24, your medical record, has two parts. "Have you experienced problems on or off the job because of any emotional or mental condition? B, Have you ever seen a health care professional for any type of problems mentioned above. If you answer yes to question A or B, please explain below."

The reference to financial records, which is question 27 is "In the last 5 years, have you or a company over which you ever exercised some control filed for bankruptcy, et cetera?"

I believe you asked for drug use. That also states in question 25, "In the last 5 years, have you used, possessed, supplied, or manufactured illegal drugs?"

Mr. EDWARDS. Let's say you answered the question yes, I consulted a psychiatrist 4 years ago. Would they ask to talk to the psychiatrist? Or they ask you to provide records?

Mr. MELROSE. They can ask for a release. They don't in every case ask for a release. The State Department medical reports are available but not to the extent that medical competence is abridged. Outside medical help, they can ask for a release. I have a copy of that release form, too, if the committee would like that?

Mr. EDWARDS. Yes. We would like that for the record, please.

[The information follows:]

Attachment 6-13 "E"



DEPARTMENT OF STATE

Washington, D.C. 20520

DATE: _____

This release, when presented by a duly authorized representative of the United State Department of State, will constitute my consent and authority for such representative to examine the records, obtain copies of such records, and secure information relating to any hospitalizations, confinements or other medical care, military or civilian.

I hereby release said hospitals, institutions, their officers, agents an employees, as well as individuals, from any and all liability for damages of whatever kind or nature which may at any time result to me on account of compliance with the above authorization, or any attempt to comply with same.

Signature of Applicant_____
Address

_____WITNESS:_____
Special Agent
U.S. Department of State

Mr. EDWARDS. All four of you ladies and gentlemen were present during the testimony of the Department of State and the State Department. All of those witnesses testified that things have improved substantially in the last few years. I think we have a disagreement with them insofar as you are concerned; is that correct?

Mr. BOWERS. Yes.

Ms. MOTEN. Mr. Chairman, if we could, we appreciate the Department of Defense and Department of State making efforts to improve things. Still employees have no right to appeal before an impartial tribunal. Until such time as that is afforded to employees, we are not going to be satisfied.

Ms. GILMAN. We agree with that. That is the bottom line here.

Mr. BOWERS. Mr. Chairman, if I may add. On April 15 of last year, we received an injunction against one of the Department of Defense forms. That injunction has since been removed by the court of appeals on a procedural problem, not on the merits. After the injunction was publicized, I personally received over 200 phone calls before I stopped keeping a phone log concerning individual problems. They were members of my union, other unions, investigators in the process. I was overwhelmed. It was an extraordinary outpouring reaching to me. Frequently these calls reached me because they called the judge. They called the judge's chambers and the clerks had my phone number ready to give it to me.

Mr. EDWARDS. Tell us about that case. Who was the complainant?

Mr. BOWERS. The National Federation of Federal Employees filed against the Department of Defense. The caption of the case is NFFE, the acronym for the union, versus Greenburg. It was a facial challenge. We challenged the Government's right to use the Department of Defense form 398-2 entitled "The National Agency Questionnaire." We contended the questions that I have gone over here and the release violated to the constitutional right to privacy.

Judge Harold Greene of the U.S. District Court for the District of Columbia agreed with us on the four questions I described. He did not address the release and issued an injunction prohibiting the Department of Defense from asking those questions to the union members.

This was appealed in the Court of Appeals for the District of Columbia Circuit, which removed the injunction on—I believe January or the first day of February of this year and we are back before Judge Greene.

Mr. EDWARDS. Mr. McCloskey.

Mr. MCCLOSKEY. Thank you very much, Mr. Chairman.

Maybe just a few general comments. We are not going to clean all of this up today.

Given the overall approaches of, let's say, management that was here before, and then hearing your concerns, I think, as the chairman partially alluded, I think it is safe to characterize the management statements as saying that overall there is tremendous fairness and really relatively few people get involved in this adversarial or negative review process and ultimately very, very, very few that get suspended.

Could you comment? I think I know the answer I will get. Could you comment on that as to just how big an issue is this? Particularly with respect to DOD and civil service employees? Is this thing churning? Do you have relatively few people saying, hey, you have to take up my case.

Ms. MOTEN. I will have to check with our litigation department to see the numbers available. As far as we are concerned, if it is only one case where somebody has no opportunity to appeal, that is too many.

Mr. MCCLOSKEY. I understand that.

Ms. MOTEN. I will be happy to try to supply numbers for the record.

Mr. MCCLOSKEY. I am not looking for numbers as such. I have numbers in my notes. I mean just from your work, the people you come in contact with, how big an issue is it?

Ms. MOTEN. For our purposes it is a very big issue with union officials. We find often supervisors simply decide that because they cannot fire somebody for union activity, they will try to figure out another way to get around the system.

Mr. MCCLOSKEY. Can you document that?

Ms. MOTEN. We have one case in particular which is very recent that I will be happy to provide.

Mr. MCCLOSKEY. Mr. Bowers, you obviously—

Mr. BOWERS. Yes, I have a lot of experience in this. I look forward to having it resolved someday. Again 200 phone calls came in that I logged in before I stopped. Many of those phone calls were individuals who were being investigated. In other words, they had made some sort of response in their forms and the investigators were coming to meet with them. They were fighting it. That is typically the way this came up.

Other individuals had had their clearance revoked and needed a lawyer. I kept an index of lawyers that practice throughout the United States by my phone so I could refer them out as these came in. I believe that the reason many of these security revocations are not appealed is the individual doesn't want to take it on.

They do not want to take on the Department of Defense or the other agencies by themselves. Federal employees don't make very much. They cannot afford to pay a lawyer thousands of dollars to represent them in this context. There are not many attorneys that have experience in this area. Most of them are not the ma and pa sort of sole practitioners. They are the big firms. Federal employees cannot afford the big firms even though it means the ends of their career. They tend to bite the bullet and go on.

Mr. MCCLOSKEY. Any other comments?

Mr. MELROSE. I would say there are a significant number of cases, significant enough to warrant attention. In many cases, the ones that we hear about are quite egregious. I believe Assistant Secretary Quainton referred to one going on for well beyond 5 years now that has not been resolved. There are others that are approaching 4, 3; GAO found that 6 months to 4 years was not unusual. This is a loss of productive work time.

Mr. MCCLOSKEY. I would say it has been mentioned before, but this can cause massive disruption, it can be a total staggering blow

even with many cases evidently showing whatever was ginned up against them.

Mr. MELROSE. When you assume every American employee of State, AID, and USIA requires a clearance to perform job duties, that all represents lost work time at a cost to the taxpayers.

Ms. GILMAN. I think, also, Mr. Chairman, there is an impact on people who know that they could be subjected to this. Even if they are not. We had some cases in the last couple of years where people who had been in positions for many years all of a sudden were being told they were going to need a clearance for that position and had to fill out the standard form 86.

And I can tell you those people were extremely upset that if they made a mistake in filling out the form that at some point they could be faced with this procedure in which they would have no meaningful review.

So there is an impact on people, the vast majority of people who never end up in a procedure like this but who know that that could end their career.

Mr. MCCLOSKEY. This may be a subjective question. Maybe I have one other question after this. In your opinion, is there a particular personality type that has a certain relish or zeal in pursuing such information?

Ms. GILMAN. I can't answer that.

Mr. BOWERS. I don't understand your question. I am sorry.

Mr. MCCLOSKEY. What is running all this at the grassroots? In the workplace? I guess subjectively speaking, you can view it as building, unnecessarily and arbitrarily, a sleaze pool of true and untrue information on specified individuals.

In your experience do people take joy in doing this?

Mr. BOWERS. I can suggest this answer: That just generally in employment relations, be it private sector or public sector, sometimes a supervisor doesn't like an employee. When that sets in, they find a way to get them. Certainly the security process provides an opportunity to get them because there is no neutral forum. Managers up the chain of command have a tendency to want to support the lower decision and find reason why the lower supervision was right. It is a vise, which is why we need a neutral forum to review these problems.

Mr. MCCLOSKEY. Can the types of information that are the subject of legitimate inquiry be more definitively specified legislatively or administratively than is the case right now?

Ms. GILMAN. I believe it can.

Mr. BOWERS. Would uniform standards be helpful? Only if there is a neutral forum to apply it.

Mr. MCCLOSKEY. As is mentioned in my opening statement, which was just submitted for the record, staff tells me we have been notified as to one civil service employee, who was a whistleblower, who was ordered on three occasions to submit to psychiatric examination, and was given a clean bill of health all three times. He refused a fourth psychiatric examination and lost his security clearance.

Do you have any comment on that type of practice, either administratively or vis-a-vis whistleblowers? Is there more to do in that area?

Ms. MOTEN. I think there has been discussion about whether whistleblower protections ought to be applied to security clearance applications as well. We support that.

Mr. BOWERS. We concur whistleblowers must be afforded the protections.

Mr. MELROSE. I agree.

Ms. GILMAN. I agree.

Mr. MCCLOSKEY. Thank you very much.

Mr. Chairman.

Mr. EDWARDS. I have one question, Mr. Chairman. The witnesses from the Department of Defense and the State Department testified that they are inching forward in making progress toward due process; that things are better than they were a few years ago. They also all said they have a way to go, and your testimony is that they have a long way to go.

I think your testimony is very compelling. Have you gotten together? Are there some recommendations that you could write out that would be of help to the two committees? I know some of the forms that you refer to, you would like to get rid of or have revised. Anything else that is a constant problem for your people?

Ms. MOTEN. Mr. Chairman, AFGE has made several suggestions and it is on the last page of our testimony. We would certainly be enthusiastic about working with both committees to try to draft legislation to achieve that purpose.

Ms. GILMAN. We also made specific suggestions in our testimony. I think it is fairly similar to AFGE. We would be happy to work with other groups and the committees to try to come up with a plan for legislation.

Mr. BOWERS. We don't have any problems with certainly the recommendations made by the other unions. We have made one as well.

We are in litigation. Settlement discussions are a natural part of litigation. Those are ongoing, although to date they have not borne much fruit. We shall see.

Mr. EDWARDS. I think that would be very helpful. It would be helpful to us.

I have no further questions.

Mr. MCCLOSKEY. I have no further questions.

Mr. EDWARDS. Thank you. You have been very helpful. We appreciate your testimony.

With that, the subcommittees shall adjourn.

[Whereupon, at 11:30 a.m., the subcommittees adjourned, to reconvene subject to the call of the Chairs.]

A P P E N D I X

MATERIAL SUBMITTED FOR THE HEARING

ADMINISTRATIVE DUE PROCESS PROVIDED

<u>AGENCY & EMPLOYEE CATEGORY</u>	<u>SECURITY CLEARANCE</u>	<u>SCI ACCESS</u>	<u>SAP ACCESS</u>
<u>Defense</u>			
Army			
Military and civilian	No Hearing	Statement of Reasons in Advance, No Hearing	Statement of Reasons in Advance, No Hearing
Contractor	Hearing	"	"
Navy			
Military and civilian	No Hearing	Statement of Reasons After Decision, No Hearing	None
Contractor	Hearing	"	None
Air Force			
Military and civilian	No Hearing	Statement of Reasons After Decision, No Hearing	None
Contractor	Hearing	"	None
<u>Energy</u>			
Government Contractor	Hearing	(a)	(a)
	Hearing	(a)	(a)
<u>State</u>			
Government Contractor	No Hearing	(a)	(a)
	No Hearing	(a)	(a)

(a) GAO did not review SCI or SAP access denials at Energy or State.



United States Department of State

Washington, D.C. 20520

JUL 7 1993

Dear Mr. Chairman:

In response to your letter dated May 26, enclosed are replies to questions addressed to the Assistant Secretary for Diplomatic Security, Anthony C.E. Quainton, following his May 5 testimony regarding due process and security clearance practices of the Department of State.

Sincerely,

A handwritten signature in cursive script that reads "Wendy R. Sherman".

Wendy R. Sherman
Assistant Secretary
Legislative Affairs

Enclosure:

As stated.

The Honorable
Don Edwards, Chairman,
Subcommittee on Civil and Constitutional Rights,
Committee on the Judiciary,
House of Representatives.

RESPONSES TO WRITTEN QUESTIONS FROM
CONGRESSMAN FRANK MCCLOSKEY
AND
CONGRESSMAN DON EDWARDS

Due Process

Question:

How many security clearances has the State Department issued in the past year?

Answer:

A total of 6,697 security clearances were issued in fiscal year 1992 by the Department. In addition, 1,798 periodic reinvestigations were conducted to update clearances previously granted, and 4,614 overseas investigations were conducted by the Department for the military and other agencies.

Question:

Can you tell me whether the number of security clearances has increased or decreased in the past 10 years?

Answer:

Clearance requirements fluctuate from year to year, but have generally risen over the years. We regret that data covering past years is only partially available due to a lack of automation of our operations, but a project is ongoing to integrate all of our processing data into one system.

Question:

Is there anything that can be done to reduce the number of security clearances?

Answer:

Absent downsizing of the Department's work force, the most that can be done is to reduce the level of investigative effort required. In this regard, during this past year the Department revised its security policies to promote the downgrading of position sensitivity of Civil Service jobs to permit hiring based on lower levels of clearance for many jobs. While this policy is especially applicable to those hired on a part-time, intermittent or temporary basis, many permanent positions have been downgraded as well. Clearance requirements for such positions are met by a minimal investigation mandated for suitability/security evaluation of all federal applicants by the Federal Personnel Manual, implementing Executive Order 10450, "Security Requirements for Government Employment."

The Department has limited this change to Civil Service employees due to the requirement for worldwide availability for members of the Foreign Service. Foreign Service employees must remain cleared for inherently critical-sensitive duties, regardless of the level of access to classified information they require at any given time.

Question:

Can you tell me now much the State Department spends annually on its National Security System? Can savings be achieved without compromising National Security by reforming the classification system?

Answer:

The Department of State is unable to identify the amount of money spent specifically to protect classified information because so many of its security programs concomitantly address several concerns, such as protecting people as well as documents. For example, the Department has guards at most embassies overseas and domestically at Main State and various annexes. The guards protect not only classified information, but employees and property. Thus, it is impossible to isolate that portion of the guard cost specifically attributable to protecting National Security Information.

Dollar savings could be achieved by reforming the classification system to reduce those categories of information which should be classified. However, these savings would be achieved over the long term, rather than overnight. In any event, the Department will still need secure communications, storage containers, guards, etc., to protect National Security Information, especially at overseas posts; and the volume of information being declassified may in fact require more declassifiers for a short time.

However, it is expected that as older documents are declassified according to the provisions of the new Executive Order now being developed, the volume of information needing to be safeguarded will decrease and savings should be realized.

Question:

Unless employees are given reasons for unfavorable security determinations, a chance to rebut charges, and the right to appeal to an independent authority, how can we ensure a "rational relationship" between an individual's conduct and specified risk factors related to protecting national security information?

Answer:

The Department of State fully agrees with the need for sharing reasons for its actions with employees, and for an appeal process that fully takes into account the employee's rebuttal and that produces an independent decision which balances the interests of the employee with that of national security. Since the mid-1980s, State's procedures have provided employees timely access to reports of investigation and summaries and analyses of information upon which we have based determinations that an employee's clearance was no longer clearly consistent with the interests of national security.

Before adverse actions (i.e., revocations or reductions of clearances) are taken, employees are first interviewed to

obtain "their side of the story" on allegations that may lead to adverse actions. Most security concerns are resolved through such direct interviews. If a clearance has been suspended, it can be reinstated at that point without further need for formal processes. If an issue cannot be resolved, employees are then given documented reasons for a proposed action, the opportunity to review their security file (they may do so with their legal representative), and they are also given a chance to respond in writing to a proposed adverse action. If the action is still deemed necessary, the employee may appeal the action to a panel chaired by the Under Secretary of State for Management. The Department is in the process of restructuring this panel to remove the Assistant Secretary for Diplomatic Security from the panel in order to ensure that it not only is independent, but also is perceived to be so. Through this process, State carefully ensures that the few adverse actions it takes reflect a rational relationship between the individual's conduct and specified security risk factors.

Question:

During periods in which employee's clearances are suspended, do they receive or can they obtain periodic notification of the status of their case?

Answer:

Yes. In fact, State's process ensures an ongoing interaction with the employee throughout this period. We require a personal interview as part of any investigative basis for adverse action, then provide written grounds for the proposed action, as well as an opportunity to appeal the decision. During such an appeal, we provide for the employee and his or her attorney an opportunity (if desired) to review the employee's security file, in accordance with existing procedures.

Question:

What can lead to undertaking an investigation of an employee as a security risk? Can an anonymous allegation lead to one?

Answer:

If a source insists on remaining anonymous, the information provided will be pursued only if deemed sufficiently detailed and credible to reflect a direct awareness of specific incidents or behavior. The Department would not consider suspending a clearance on such allegations unless independently corroborated or supported.

While allegations can come to our attention from all types of sources, to include some who wish to remain anonymous, the

Department of State urges all sources to identify themselves, even if they wish to claim confidentiality protection.

Regardless of the source or nature of information of security concern that comes to our attention, the Diplomatic Security Service attempts to resolve credible information first through direct contact with the employee. By interviewing the employee first, we are often able to avoid interviewing other employees or neighbors, so as not to spread allegations needlessly that are potentially spurious and could damage the employee's reputation.

With the forgoing caveat, information relating to any of the following areas could serve as the basis for investigation of an employee as a possible security risk:

- Involvement in sabotage or espionage;
- Advocacy of use of force or violence to overthrow the U.S. Government;
- Intentional unauthorized disclosure of classified information;
- Performing duties so as to serve the interests of another country;
- Facts which indicate an individual may be subjected to coercion or influence;
- Involvement in criminal activity;
- Involvement in any situation that calls into question an individual's discretion, trustworthiness, or reliability;

- Deliberate misrepresentation, falsification, or omission of material facts;
- Notoriously disgraceful conduct;
- Illness or medical condition which causes dysfunction in normal decision-making.



OFFICE OF THE ASSISTANT SECRETARY OF DEFENSE

WASHINGTON DC 20301-3040

COMMAND, CONTROL,
COMMUNICATIONS
AND INTELLIGENCE

9 JUL 1993

Honorable Don Edwards
Chairman, Subcommittee on Civil and
Constitutional Rights
Committee on the Judiciary
House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman

At the enclosure are the responses to eight questions raised concerning our testimony before a Joint Hearing of the Subcommittee on Civil Service and the Subcommittee on Civil and Constitutional Rights on May 5, 1993. Also enclosed is a copy of the recently approved changes to the DoD Personnel Security Program Regulation, DoD 5200.2-R, implementing the recommendations contained in the May 1992 General Accounting Office report concerning due process procedures in the Department of Defense.

If there are additional questions regarding DoD adjudicative and due process procedures please do not hesitate to contact me.

A copy of this correspondence has also been addressed to Chairman McCloskey and the Subcommittee on Civil Service.

Sincerely,

Ray W. Pollari
Acting Deputy Assistant Secretary of Defense
(Counterintelligence and Security Countermeasures)

Enclosures

DOD RESPONSES TO QUESTIONS FROM THE JOINT SUBCOMMITTEES ON THE CIVIL SERVICE AND CIVIL AND CONSTITUTIONAL RIGHTS

1. GAO TESTIFIED THAT ARMY USES DIFFERENT PROCEDURES WITH RESPECT TO ACCESS TO SCI THAN AIR FORCE AND NAVY - SPECIFICALLY, INDIVIDUALS ARE NOTIFIED BY ARMY THAT THEY WOULD BE DENIED ACCESS OR THAT THEIR ACCESS WAS BEING REVOKED. WHY CAN'T EACH COMPONENT OF DOD USE THE SAME PROCEDURES ARMY DOES?

DOD RESPONSE. We agree with your suggestion that all DoD Components should employ consistent notice and appeal procedures with regard to a denial or revocation of a security clearance or access to sensitive compartmented information (SCI). Accordingly, DoD will pursue a change to the SCI due process procedure to include initial written notification of the reasons for the action. This would make the SCI procedure consistent with the existing notice and appeal procedure for DoD security clearances. Furthermore, the Air Force, Defense Intelligence Agency, and the National Security Agency are currently employing procedures similar to Army's. The Navy is planning to implement these procedures once their adjudication facilities are fully consolidated.

2. DO YOU THINK SAVINGS COULD BE ACHIEVED WITHOUT COMPROMISING NATIONAL SECURITY BY REFORMING THE CLASSIFICATION PROCESS? (I.E. BY HAVING A SINGLE GOVERNMENT-WIDE CRITERIA FOR SECURITY CLEARANCE, SAP, AND SCI ACCESS, HAVING CENTRALIZED ADJUDICATION)

DOD RESPONSE. With respect to the issue of the classification (vice clearance) process, the Information Security Oversight Office is addressing this matter pursuant to the PRD 29 mandate to revise E.O. 12356 as well as the Joint DCI/SecDef Security Commission. With respect to a single, government-wide adjudication criteria, the National Industrial Security Program (NISP), in accordance with E.O. 12829, has drafted uniform guidelines for determining eligibility for a security clearance, and SCI access. Adoption of this single standard should help achieve greater uniformity and reciprocity in the granting and denial of security clearances and SCI/SAP access.

3. WHAT TYPE OF ACCUSATION OR INFORMATION CAN LEAD TO AN INVESTIGATION OF AN EMPLOYEE AS A SECURITY RISK ONCE THEY HAVE A CLEARANCE? CAN AN ANONYMOUS ALLEGATION LEAD TO THE INITIATING OF AN INVESTIGATION?

DOD RESPONSE. Information or accusations that could lead to further investigation relating to an individual's continued reliability and trustworthiness include abuse of drugs or alcohol, spouse or child abuse, giving classified information to unauthorized persons, felony arrest(s) or conviction(s), falsification of government documents, or failure to pay creditors. Essentially, anything that relates to the potentially disqualifying factors in the DoD adjudication criteria could be the basis for initiation of an inquiry to prove or disprove an allegation. An anonymous allegation could lead to the initiation of an investigation depending on the nature, seriousness and credibility of the allegation. However, any such investigation will be sufficiently comprehensive in scope to resolve the allegation and will always include an interview of the

subject in order to afford the individual an opportunity to respond directly to the charges.

4. IN WHAT PERCENTAGE OF SCI ACCESS DENIAL, SUSPENSION OR REVOCATION CASES DOES DOD GIVE NOTIFICATION IN WRITING? IN WHAT PERCENTAGE OF THOSE CASES DOES DOD PROVIDE A STATEMENT OF REASONS?

DOD RESPONSE: It is DoD policy to provide written notification to 100% of the individuals involved in the denial or revocation of SCI access in accordance with the policy of the Director of Central Intelligence. However, the Director of Central Intelligence Directive 1/14 does not require that the individual be provided a statement of the reasons for the denial or revocation, unless requested. No written notice is required for suspension of SCI access. While most DoD SCI adjudication authorities voluntarily provide a statement of reasons for SCI access denials or revocations, they do not account for 100% of the adverse SCI actions undertaken. If the due process policy in DCID 1/14 is revised to require a written notification of reasons in the first instance, then it will become official policy for all SCI denials or revocations to be accompanied by a statement of reasons.

5. IF THE CONSOLIDATION FROM 18 TO 8 WILL REDUCE COSTS AND HELP ENSURE A MORE UNIFORM APPLICATION OF BOTH THE DOD AND SCI ADJUDICATION STANDARDS AS WELL AS THE NOTICE AND APPEAL PROCEDURES, WOULDN'T FURTHER CONSOLIDATION CONTRIBUTE MORE TO THESE GOALS?

DOD RESPONSE: The decision by the Deputy Secretary of Defense to consolidate from 18 to 8 adjudication facilities will promote greater consistency of adjudicative outcomes and due process procedures and will save \$21.9 million through FY 99. Although total adjudicative consolidation was estimated to save \$31.5 through FY 99, the Deputy Secretary weighed a number of other issues before deciding on eight facilities vs. total consolidation. Among those issues was that the eight facilities could serve as a logical interim step towards total consolidation.

6. IS IT THE PRACTICE OF ANY DOD COMPONENT TO REOPEN CLOSED CASE FILES AND TO RESUBMIT PREVIOUSLY RESOLVED CHARGES IN WHISTLEBLOWER CASES?

DOD RESPONSE: This office is not aware of any practice by DoD clearance adjudication facilities to reopen closed case files if the individual subsequently comes forward under the Whistleblower Protection Act, unless new information of security significance becomes available, apart from the fact that the person is disclosing information to authorized oversight, audit or inspection offices or to Congress.

7. CAN DOD SUSPEND OR REVOKE SOMEONE'S CLEARANCE BECAUSE OF DISCLOSURE OF NON-CLASSIFIED INFORMATION - FOR EXAMPLE, IF SOMEONE MAKES A DISCLOSURE THAT IS A PROTECTED DISCLOSURE UNDER THE WHISTLEBLOWER PROTECTION ACT - IF THAT DISCLOSURE VIOLATES A DOD POLICY OR REGULATION?

DOD RESPONSE: DoD adjudication criteria are not intended to require revocation of a security clearance solely because of disclosure of non-classified information under circumstances protected by the Whistleblower Protection Act. If a whistleblower is believed to have engaged in activity which is in violation of one of the DoD adjudication criteria, thus bringing into question his or her continued trustworthiness or reliability, then appropriate investigation would be initiated to attempt to resolve the issue. In the event such investigation substantiated a violation of the adjudication criteria, the individual would be notified in writing of the reasons for the contemplated unfavorable action and afforded an opportunity to reply to and appeal the decision in accordance with standard DoD due process procedures.

8. HOW DOES THE TIME AND COST OF PROVIDING A HEARING DUE PROCESS PROCEDURE COMPARE TO THE COST OF WRITTEN PROCEDURES?

DOD RESPONSE: According to a recent draft C3I sponsored study by the Defense Personnel Security Research Center (PERSEREC) report on the subject of due process, the total cost of hearing due process procedures for contractor personnel under the provisions of E.O. 10865, including an appeal, was \$9,354. This contrasts with the cost of the written due process procedures for military and civilian personnel of \$914. This does not include any costs attributable to the additional 206 days, on the average, that it takes to complete the E.O. 10865 hearing due process procedures (426 days vs. 220).



ASSISTANT SECRETARY OF DEFENSE

WASHINGTON, D.C. 20301-3040

June 29, 1993

COMMAND, CONTROL,
COMMUNICATIONS
AND
INTELLIGENCE

MEMORANDUM FOR DIRECTOR, WASHINGTON HEADQUARTERS SERVICES

SUBJECT: Pen and Page Changes to DoD Directive 5200.2-R, "Personnel Security Program"

Please issue a SD Form 106-1, "DoD Directives System Transmittal," incorporating the following pen and page changes:

Pen Changes:

1. Index, page ii, cross out I-314 DoD National Agency Check plus Written Inquiries (DNACI)...I-4

2. Index, page ii, (renumber) change "I-315" to "I-314"; change "I-316" to "I-315"; change "I-317" to "I-316"; change "I-318" to "I-317"; change "I-319" to "I-318"; change "I-320" to "I-319"; change "I-321" to "I-320"; change "I-322" to "I-321"; change "I-323" to "I-322"; change "I-324" to "I-323"; change "I-325" to "I-324"; change "I-326" to "I-325"; and change "I-327" to "I-326"

3. Index, page iii, (renumber) change "I-328" to "I-327"; change "I-329" to "I-328" and change "I-330" to "I-329"

4. Index, page vii, 8-202 Exceptions to Policy, change "VIII-3 " to "VIII-4"

5. Index page viii, Appendices, Appendix H cross out "List of Designated Countries"...H-1

6. Page I-5, (renumber) change "I-318" to "I-317"; change "I-319" to "I-318"; change "I-320" to "I-319"; change "I-321" to "I-320"; change "I-322" to "I-321"; change "I-323" to "I-322"; change "I-324" to "I-323"; and change "I-325" to "I-324"; change "I-326" to "I-325"; and change "I-327" to "I-326"

7. Page I-6, (renumber) change "I-326" to "I-325"; change "I-327" to "I-326", change "I-328" to "I-327"; change "I-329" to "I-328" and change "I-330" to "I-329"

8. Page E-1, Appendix E, #3., second line change "with persons from or living in a designated country (Appendix H)" to "with persons from or living in a foreign country or foreign intelligence service"

9. Page I-13, Appendix I, Disqualifying Factors, #3, lines 3 and 4, change "or in country designated hostile to the United States (See Appendix H). to "foreign intelligence services."

Page Changes

Remove: Pages I-3 and I-4
 Insert: Attached replacement pages

Remove: Page VI-3
 Insert : Attached replacement page

Remove: Pages VII-1, VII-2, and VII-3
 Insert: Attached replacement pages

Remove: Pages VIII-1, VIII-2, VIII-3, and VIII-4
 Insert: Attached replacement pages

Remove: Pages IX-3, IX-4, and IX-5
 Insert: Attached replacement pages

Remove: Pages XI-1 and XI-2
 Insert: Attached replacement pages

Remove: Page B-11 and B-12
 Insert: Attached replacement pages

Remove: Page H-1
 No Insert: List of Designated Countries is deleted

Any changes on the above pages are indicated by marginal asterisks.
 Include the following statement on the SD Form 106-2:

"The above changes are effective immediately."

The attached replacement pages are at TAB A. The changes have been coordinated with relevant DoD Components. All concurred, and comments have been accepted, or rejected with justifications. The list of coordinating officials and the coordinating papers are at TAB B.


 Emmett Paige, Jr.

Attachments

DEPARTMENT OF DEFENSE DIRECTIVE SYSTEMS COORDINATION RECORD

(continued)

5. Purpose and Remarks

Proposed policy and procedural changes to 5200.2-R. These changes implement recommendations of a recent GAO study entitled "Security Clearances: Due Process for Denials and Revocations by Defense, Energy, and State," dated May 6, 1992. Earlier draft of policy and procedural changes were circulated for review and comment to the DoD Components and their comments have been incorporated in this draft. Significant changes pertain to written notification and prompt resolution of suspension actions, assistance in obtaining investigative files, entering clearance determinations into the DCII, retention of adjudicative rationales, entering "access" codes into the DCII, and a new report control symbol for management data.

Pen Changes:

1. Index, page ii, cross out I-314 DoD National Agency Check plus Written Inquiries (DNACI)...I-4

2. Index, page ii, change "I-315" to "I-314"; change "I-316" to "I-315"; change "I-317" to "I-316"; change "I-318" to "I-317"; change "I-319" to "I-318"; change "I-320" to "I-319"; change "I-321" to "I-320"; change "I-322" to "I-321"; change "I-323" to "I-322"; change "I-324" to "I-323"; change "I-325" to "I-324"; change "I-326" to "I-325"; and change "I-327" to "I-326"

3. Index, page iii, change "I-328" to "I-327"; change "I-329" to "I-328" and change "I-330" to "I-329"

4. Index, page vii, 8-202 Exceptions to Policy, change "VIII-3" to "VIII-4"

5. Index page viii, Appendices, Appendix H cross out "List of Designated Countries".... H-1

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7. Page I-6, change "I-326" to "I-325"; change "I-327" to "I-326", change "I-328" to "I-327"; change "I-329" to "I-328" and change "I-330" to "I-329"

8. Page E-1, Appendix E, #3., second line change "designated country (Appendix H)" to "foreign country or foreign intelligence service"

9. Page I-13, Appendix I, Disqualifying Factors, #3, lines 3 and 4, change "or in a country designated hostile to the United States (See Appendix H) to "foreign intelligence services."

Page Changes

Remove: Pages I-3 and I-4

Insert: Attached replacement pages

Remove: Page VI-3

Insert : Attached replacement page

Remove: Pages VII-1, VII-2, and VII-3

Insert: Attached replacement pages

Remove: Pages VIII-1, VIII-2, VIII-3, and VIII-4

Insert: Attached replacement pages

Remove: Pages IX-3, IX-4, and IX-5

Insert: Attached replacement pages

Remove: Pages XI-1 and XI-2

Insert: Attached replacement pages

Remove: Page B-11 and B-12

Insert: Attached replacement pages

Remove: Page H-1

No insert: List of Designated Countries is deleted

Any changes on the above pages are indicated by marginal asterisks. Include the following statement on the SD Form 106-1:

"The above changes are effective immediately."

1-304 Defense Clearance and Investigative Index (DCII)

- * The DCII is the single, automated, central DoD repository which identifies *
 * investigations conducted by DoD investigative agencies, and personnel security *
 * determinations made by DoD adjudicative authorities. *

1-305 DoD Component

- * Includes the Office of the Secretary of Defense; the Military Departments; *
 Chairman of the Joint Chiefs of Staff and the Joint Staff; Directors of Defense
 Agencies and the Unified and Specified Commands.

1-306 Entrance National Agency Check (ENTNAC)

A personnel security investigation scoped and conducted in the same manner as a National Agency Check except that a technical fingerprint search of the files of the Federal Bureau of Investigation is not conducted.

1-307 Head of DoD Component

- * The Secretary of Defense; the Secretaries of the Military Departments; the *
 Chairman of the Joint Chiefs of Staff; and the Commanders of Unified and Specified
 Commands; and the Directors of Defense Agencies.

1-308 Immigrant Alien

Any alien lawfully admitted into the United States under an immigration visa for permanent residence.

1-309 Interim Security Clearance

A security clearance based on the completion of minimum investigative requirements, which is granted on a temporary basis, pending the completion of the full investigative requirements.

1-310 Limited Access Authorization

Authorization for access to Confidential or Secret information granted to non-United States citizens and immigrant aliens, which is limited to only that information necessary to the successful accomplishment of their assigned duties and based on a background investigation scoped for 10 years (paragraph 3, Appendix B).

1-311 Minor Derogatory Information

Information that, by itself, is not of sufficient importance or magnitude to justify an unfavorable administrative action in a personnel security determination.

1-312 National Agency Check (NAC)

A personnel security investigation consisting of a records review of certain national agencies as prescribed in paragraph 1, Appendix B, this Regulation, including a technical fingerprint search of the files of the Federal Bureau of Investigation (FBI).

1-313 National Agency Check Plus Written Inquiries (NACI)

A personnel security investigation conducted by the Office of Personnel Management, combining a NAC and written inquiries to law enforcement agencies, former employers and supervisors, references and schools.

* 1-314 National Security *

National security means the national defense and foreign relations of the United States.

* 1-315 Need-to-know *

A determination made by a possessor of classified information that a prospective recipient, in the interest of national security, has a requirement for access to, knowledge, or possession of the classified information in order to perform tasks or services essential to the fulfillment of an official United States Government program. Knowledge, possession of, or access to, classified information shall not be afforded to any individual solely by virtue of the individual's office, position, or security clearance.

* 1-316 Periodic Reinvestigation (PRI) *

An investigation conducted every five years for the purpose of updating a previously completed background investigation, special background investigation, single scope background investigation or PR on persons occupying positions referred to in paragraphs 3-700 through 3-710. Investigative requirements are as prescribed in paragraph 5, Appendix B, of this Regulation. The period of investigation will not normally exceed the most recent 5-year period.

* 1-317 Personnel Security Investigation (PSI) *

Any investigation required for the purpose of determining the eligibility of DoD military and civilian personnel, contractor employees, consultants, and other persons affiliated with the Department of Defense, for access to classified information, acceptance or retention in the Armed Forces, assignment or retention in sensitive duties, or other designated duties requiring such investigation. PSIs include investigations of affiliations with subversive organizations, suitability information, or hostage situations (see paragraph

- (1) The nature and seriousness of the conduct;
- (2) The circumstances surrounding the conduct;
- (3) The frequency and recency of the conduct;
- (4) The age of the individual;
- (5) The voluntariness of participation; and
- (6) The absence or presence of rehabilitation.

b. Detailed adjudication policy guidance to assist adjudicators in determining whether a person is eligible for access to classified information or assignment to sensitive duties is contained in Appendix I. Adjudication policy for access to SCI is contained in DCID 1/14.

6-103 Adjudicative Record

- * a. Each adjudicative determination, whether favorable or unfavorable, shall be *
 * entered into the Defense Clearance and Investigations Index (DCII) on a daily basis. *
 * but in no case to exceed 5 working days from the date of determination. *
- * b. The rationale underlying each unfavorable personnel security *
 * determination, to include the appeal process, and each favorable personnel security *
 * determination where the investigation or information upon which the determination *
 * was made included significant derogatory information of the type set forth in *
 * paragraph 2-200 and Appendix I of this Regulation, shall be maintained in written or *
 * automated form and is subject to the provisions of DoD Directives 5400.7 (reference *
 * (aa)) and 5400.11 (reference (bb)). This information shall be maintained for a *
 * minimum of 5 years from the date of determination. *

CHAPTER VII

ISSUING CLEARANCE AND GRANTING ACCESS

7-100 General

a. The issuance of a personnel security clearance (as well as the function of determining that an individual is eligible for access to Special Access program information, or is suitable for assignment to sensitive duties or such other duties that require a trustworthiness determination) is a function distinct from that involving the granting of access to classified information. Clearance determinations are made on the merits of the individual case with respect to the subject's suitability for security clearance. Access determinations are made solely on the basis of the individual's need for access to classified information in order to perform official duties. Except for suspension of access pending final adjudication of a personnel security clearance, access may not be finally denied for cause without applying the provisions of paragraph 8-102.

b. Only the authorities designated in Paragraph A, Appendix F are authorized to grant, deny or revoke personnel security clearances or Special Access authorizations (other than SCI). Any commander or head of an organization may suspend access for cause when there exists information raising a serious question as to the individual's ability or intent to protect classified information, provided that the procedures set forth in paragraph 8-102 of this Regulation are complied with.

c. All commanders and heads of DoD organizations have the responsibility for determining those position functions in their jurisdiction that require access to classified information and the authority to grant access to incumbents of such positions who have been cleared under the provisions of this Regulation.

7-101 Issuing Clearance

a. Authorities designated in Paragraph A, Appendix F shall record the issuance, denial, or revocation of a personnel security clearance in the DCII (see paragraph 6-103, above). A record of the clearance issued shall also be recorded in an individual's personnel/security file or official personnel folder, as appropriate.

b. A personnel security clearance remains valid until (1) the individual is separated from the Armed Forces, (2) separated from DoD civilian employment, (3) has no further official relationship with DoD, (4) official action has been taken to deny, revoke or suspend the clearance or access, or (5) regular access to the level of classified information for which the individual holds a clearance is no longer necessary in the normal course of his or her duties. If an individual resumes the original status of (1), (2), (3), or (5) above, no single break in the individual's relationship with DoD exists greater than 24 months, and/or the need for regular access to classified information at or below the previous level recurs, the appropriate clearance shall be reissued without further investigation or adjudication provided there has been no additional investigation or development of derogatory information.

c. Personnel security clearances of DoD military personnel shall be granted, denied, or revoked only by the designated authority of the parent Military Department. Issuance, reissuance, denial, or revocation of a personnel security clearance by any DoD Component concerning personnel who have been determined to be eligible for clearance by another component is expressly prohibited. Investigations conducted on Army, Navy, and Air Force personnel by DIS will be returned only to the parent service of the subject for adjudication regardless of the source of the original request. The adjudicative authority will be responsible for expeditiously transmitting the results of the clearance determination. As an exception, the employing DoD Component may issue an interim clearance to personnel under their administrative jurisdiction pending a final eligibility determination by the individual's parent Component. Whenever an employing DoD component issues an interim clearance to an individual from another Component, written notice of the action shall be provided to the parent Component.

* d. When a Defense agency, to include the Chairman of the Joint Chiefs of Staff, initiates an SSBI (or PR) for access to SCI on a military member, DIS will return the completed investigation to the appropriate Military Department adjudicative authority in accordance with paragraph 7-101.c., above, for issuance (or reissuance) of the Top Secret clearance. Following the issuance of the security clearance, the military adjudicative authority will forward the investigative file to the Defense agency identified in the "Return Results To" block of the DD Form 1879. The receiving agency will then forward the completed SSBI to DIA for the SCI adjudication in accordance with DCID 1/14. *

e. The interim clearance shall be recorded in the DCSI (paragraph 6-103, above) by the parent DoD Component in the same manner as a final clearance.

7-102 Granting Access

a. Access to classified information shall be granted to persons whose official duties require such access and who have the appropriate personnel security clearance. Access determinations (other than for Special Access programs) are not an adjudicative function relating to an individual's suitability for such access. Rather they are decisions made by the commander that access is officially required.

b. In the absence of derogatory information on the individual concerned, DoD commanders and organizational managers shall accept a personnel security clearance determination, issued by any DoD authority authorized by this Regulation to issue personnel security clearance, as the basis for granting access, when access is required, without requesting additional investigation or investigative files.

* c. The access level of cleared individuals will, wherever possible, be entered *
* into the Defense Clearance and Investigations Index (DCII), along with clearance *
* eligibility. However, completion of the DCII Access field is required effective 1 *
* October 1993 in all instances where the adjudicator is reasonably aware of the level *
* of classified access associated with a personnel security investigation. Agencies are *
* encouraged to start completing this field as soon as possible. *

7-103 Administrative Withdrawal

As set forth in paragraph 7-101.b., above, the personnel security clearance and access eligibility must be withdrawn when the events described therein occur. When regular access to a prescribed level of classified information is no longer required in the normal course of an individual's duties, the previously authorized access eligibility level must be administratively downgraded or withdrawn, as appropriate.

CHAPTER VIII

UNFAVORABLE ADMINISTRATIVE ACTIONS

Section I

REQUIREMENTS

8-100 General

For purposes of this Regulation, an unfavorable administrative action includes any adverse action which is taken as a result of a personnel security determination, as defined at paragraph 1-301, and any unfavorable personnel security determination, as defined at paragraph 1-329. This chapter is intended only to provide guidance for the internal operation of the Department of Defense and is not intended to, does not, and may not be relied upon, to create or enlarge the jurisdiction or review authority of any court or administrative tribunal, including the Merit Systems Protection Board.

8-101 Referral for Action

a. Whenever derogatory information related to the criteria and policy set forth in paragraph 2-2200 and Appendix I of this Regulation is developed or otherwise becomes available to any DoD element, it shall be referred by the most expeditious means to the commander or the security officer of the organization to which the individual is assigned for duty. The commander or security officer of the organization to which the subject of the information is assigned shall review the information in terms of its security significance and completeness. If further information is needed to confirm or disprove the allegations, additional investigation should be requested. The commander of the duty organization shall insure that the parent Component of the individual concerned is informed promptly concerning (1) the derogatory information developed and (2) any actions taken or anticipated with respect thereto. However, referral of derogatory information to the commander or security officer shall in no way affect or limit the responsibility of the central adjudication facility to continue to process the individual for denial or revocation of clearance or access to classified information, in accordance with paragraph 8-201, below, if such action is warranted and supportable by the criteria and policy contained in paragraph 2-200 and Appendix I. No unfavorable administrative action as defined in paragraph 1-328 and 329 may be taken by the organization to which the individual is assigned for duty without affording the person the full range of protections contained in paragraph 8-201, below, or, in the case of SCI, Annex B, DCID 1/14 (reference (1)).

b. The Director DIS shall establish appropriate alternative means whereby information with potentially serious security significance can be reported other than through DoD command or industrial organization channels. Such access shall include utilization of the DoD Inspector General "hotline" to receive such reports for appropriate follow-up by DIS. DoD Components and industry will assist DIS in publicizing the availability of appropriate reporting channels. Additionally, DoD Components will augment the system when and where necessary. Heads of DoD Components will be notified immediately to take action if appropriate.

8-102 Suspension

a. The commander or head of the organization shall determine whether, on the basis of all facts available upon receipt of the initial derogatory information, it is in the interests of national security to continue subject's security status unchanged or to take interim action to suspend subject's access to classified information or assignment to sensitive duties (or other duties requiring a trustworthiness determination), if information exists which raises serious questions as to the individual's ability or intent to protect classified information or execute sensitive duties (or other duties requiring a trustworthiness determination) until a final determination is made by the appropriate authority designated in Appendix F.

b. Whenever a determination is made to suspend a security clearance for access to classified information or assignment to sensitive duties (or other duties requiring a trustworthiness determination), the individual concerned must be notified of the determination in writing by the commander, or head of the component or adjudicative authority, to include a brief statement of the reason(s) for the suspension action consistent with the interests of national security.

c. Component field elements must promptly report all suspension actions to the appropriate central adjudicative authority, but not later than 10 working days from the date of the suspension action. The adjudicative authority will immediately update the DCII Eligibility and Access fields to alert all users to the individual's changed status.

d. Every effort shall be made to resolve suspension cases as expeditiously as circumstances permit. Suspension cases exceeding 180 days shall be closely monitored and managed by the DoD Component concerned until finally resolved. Suspension cases pending in excess of 12 months will be reported to the DASD (CI & SCM) for review and appropriate action.

e. A final security clearance eligibility determination shall be made for all suspension actions and the determination entered in the DCII. If, however, the individual under suspension leaves the jurisdiction of the Department of Defense and no longer requires a clearance (or trustworthiness determination), entry of the "Z" Code (adjudication action incomplete due to loss of jurisdiction) in the clearance eligibility field is appropriate. In no case shall a "suspension" code (Code Y) remain as a permanent record in the DCII.

f. A clearance or access entry in the DCII shall not be suspended or downgraded based solely on the fact that a periodic reinvestigation was not conducted precisely within the 5-year time period for TOP SECRET/SCI or within the period prevailing for SECRET clearances under departmental policy. While every effort should be made to ensure that PRs are conducted within the prescribed timeframe, agencies must be flexible in their administration of this aspect of the personnel security program so as not to undermine the ability of the Department of Defense to accomplish its mission.

8-103 Final Unfavorable Administrative Actions

The authority to make personnel security determinations that will result in an unfavorable administrative action is limited to those authorities designated in Appendix F, except that the authority to terminate the employment of a civilian

employee of a military department or Defense agency is vested solely in the head of the DoD component concerned and in such other statutory official as may be designated. Action to terminate civilian employees of the Office of the Secretary of Defense and DoD Components, on the basis of criteria listed in paragraph 2-200, a through f, shall be coordinated with the Office of the Assistant Secretary of Defense for Command, Control, Communications and Intelligence OASD (C3I) prior to final action by the head of the DoD Component. DoD civilian employees or members of the Armed Forces shall not be removed from employment or separated from the Service under provisions of this regulation if removal or separation can be effected under OPM regulations or administrative (nonsecurity) regulations of the military departments. However, actions contemplated in this regard shall not affect or limit the responsibility of the central adjudication facility to continue to process the individual for denial or revocation of a security clearance, access to classified information, or assignment to a sensitive position if warranted and supportable by the criteria and standards contained in this Regulation.

Section 2

PROCEDURES

8-200 General

No final personnel security determination shall be made on a member of the Armed Forces, an employee of the Department of Defense, a consultant to the Department of Defense, or any other person affiliated with the Department of Defense without granting the individual concerned the procedural benefits set forth in 8-201 below, when such determination results in an unfavorable administrative action (see paragraph 8-100). As an exception, Red Cross/United Service Organizations employees shall be afforded the procedures prescribed by DoD Directive 5210.25 (reference (w)).

8-201 Unfavorable Administrative Action Procedures

Except as provided for below, no unfavorable administrative action shall be taken under the authority of this Regulation unless the person concerned has been given:

a. A written statement of the reasons why the unfavorable administrative action is being taken. The statement shall be as comprehensive and detailed as the protection of sources afforded confidentiality under provisions of the Privacy Act of 1974 (5 U.S.C. 522a) (reference (m)) and national security permit. The statement will also provide the name and address of the agency (agencies) to which the individual may write to obtain a copy of the investigative file(s) upon which the unfavorable administrative action is being taken. Prior to issuing a statement of reasons to a civilian employee for suspension or removal action, the issuing authority must comply with the provisions of Federal Personnel Manual, Chapter 732, Subchapter 1, paragraph 1-6b (reference (cc)). The signature authority must be as provided for in paragraph 6-101.b.(1)(b) and 6-101.b.(2)(b).

b. An opportunity to reply in writing to such authority as the head of the Component concerned may designate.

c. A written response to any submission under subparagraph b. stating the final reason therefor, which shall be as specific as privacy and national security considerations permit. The signature authority must be as provided for in paragraphs 6-101.b.(1)(b) and 6-101.b.(2)(b). Such response shall be as prompt as individual circumstances permit, not to exceed 60 days from the date of receipt of the appeal submitted under subparagraph b., above, provided no additional investigative action is necessary. If a final response cannot be completed within the time frame allowed, the subject must be notified in writing of this fact, the reasons therefor, and the date a final response is expected, which shall not, in any case, exceed a total of 90 days from the date of receipt of the appeal under subparagraph b.

d. An opportunity to appeal to a higher level of authority designated by the Component concerned.

8-202 Exceptions to Policy

Notwithstanding paragraph 8-201 above or any other provision of this Regulation, nothing in this Regulation shall be deemed to limit or affect the responsibility and powers of the Secretary of Defense to find that a person is unsuitable for entrance or retention in the Armed Forces, or is ineligible for a security clearance or assignment to sensitive duties, if the national security so requires, pursuant to Section 7532, Title 5, United States Code (reference (pp)). Such authority may not be delegated and may be exercised only when it is determined that the procedures prescribed in paragraph 8-201 above are not appropriate. Such determination shall be conclusive.

Section 3

REINSTATEMENT OF CIVILIAN EMPLOYEES

8-300 General

Any person whose civilian employment in the Department of Defense is terminated under the provisions of this Regulation shall not be reinstated or restored to duty or reemployed in the Department of Defense unless the Secretary of Defense, or the head of a DoD Component, finds that such reinstatement, restoration, or reemployment is clearly consistent with the interests of national security. Such a finding shall be made part of the personnel security record.

8-301 Reinstatement Benefits

A DoD civilian employee whose employment has been suspended or terminated under the provisions of this Regulation and who is reinstated or restored to duty under the provisions of Section 3571 of Title 5, U.S. Code (reference (dd)) is entitled to benefits as provided for by Section 3 of Public Law 89-380 (reference (ee)).

b. Moreover, individuals having access to classified information must report promptly to their security office:

(1) Any form of contact, intentional or otherwise, with individuals of any nationality, whether within or outside the scope of the employee's official activities, in which:

(a) Illegal or unauthorized access is sought to classified or otherwise sensitive information.

(b) The employee is concerned that he or she may be the target of exploitation by a foreign entity.

(2) Any information of the type referred to in paragraph 2-200 or Appendix I.

9-104 Co-worker Responsibility

Co-workers have an equal obligation to advise their supervisor or appropriate security official when they become aware of information with potentially serious security significance regarding someone with access to classified information employed in a sensitive position.

Section 2

SECURITY EDUCATION

9-200 General

The effectiveness of an individual in meeting security responsibilities is proportional to the degree to which the individual understands them. Thus, an integral part of the DoD security program is the indoctrination of individuals on their security responsibilities. Moreover, such indoctrination is essential to the efficient functioning of the DoD personnel security program. Accordingly, heads of DoD Components shall establish procedures in accordance with this chapter whereby persons requiring access to classified information, or being assigned to positions that require the occupants to be determined trustworthy are periodically briefed as to their security responsibilities.

9-201 Initial Briefings

a. All persons cleared for access to classified information or assigned to duties requiring a trustworthiness determination under this Regulation shall be given an initial security briefing. The briefing shall be in accordance with the requirements of paragraph 10-102, DoD 5200.1-R (reference (q)) and consist of the following elements:

(1) The specific security requirements of their particular job.

(2) The techniques employed by foreign intelligence activities in attempting to obtain classified information and their responsibility for reporting such attempts.

(3) The prohibition against disclosing classified information, by any means, to unauthorized persons or discussing or handling classified information in a manner that would make it accessible to unauthorized persons.

(4) The penalties that may be imposed for security violations.

b. If an individual declines to execute Standard Form 312, "Classified Information Nondisclosure Agreement" (replaced the Standard Form 189), the DoD Component shall initiate action to deny or revoke the security clearance of such person in accordance with paragraph 8-102, above.

9-202 Refresher Briefing

Programs shall be established to provide, at a minimum, annual security training for personnel having continued access to classified information. The elements outlined in paragraph 10-101, DoD 5200.1-R (reference (q)) shall be tailored to fit the needs of the experienced personnel.

9-203 Foreign Travel Briefing

While world events during the past several years have diminished the threat to our national security from traditional cold-war era foreign intelligence services, foreign intelligence services continue to pursue the unauthorized acquisition of classified or otherwise sensitive U.S. Government information, through the recruitment of U.S. Government employees with access to such information. Through security briefings and education, the Department of Defense continues to provide for the protection of information and technology considered vital to the national security interests from illegal or unauthorized acquisition by foreign intelligence services.

a. DoD Components will establish appropriate internal procedures requiring all personnel possessing a DoD security clearance to report to their security office all contacts with individuals of any nationality, whether within or outside the scope of the employee's official activities, in which:

(1) Illegal or unauthorized access is sought to classified or otherwise sensitive information.

(2) The employee is concerned that he or she may be the target of exploitation by a foreign entity.

b. The DoD security manager, security specialist, or other qualified individual will review and evaluate the reported information. Any facts or circumstances of a reported contact with a foreign national that appear to:

(1) Indicate an attempt or intention to obtain unauthorized access to proprietary, sensitive, or classified information or technology.

(2) Offer a reasonable potential for such, or

(3) Indicate the possibility of continued contact with the foreign national for such purposes.

shall be promptly reported to the appropriate counterintelligence agency.

9-204 Termination Briefing

a. Upon termination of employment administrative withdrawal of security clearance, or contemplated absence from duty or employment for 60 days or more, DoD military personnel and civilian employees shall be given a termination briefing, return all classified material, and execute a Security Termination Statement. This statement shall include:

(1) An acknowledgment that the individual has read the appropriate provisions of the Espionage Act, other criminal statutes, DoD Regulations applicable to the safeguarding of classified information to which the individual has had access, and understands the implications thereof;

(2) A declaration that the individual no longer has any documents or material containing classified information in his or her possession;

(3) An acknowledgment that the individual will not communicate or transmit classified information to any unauthorized person or agency; and

(4) An acknowledgment that the individual will report without delay to the FBI or DoD Component concerned any attempt by any unauthorized person to solicit classified information.

b. When an individual refuses to execute a Security Termination Statement, that fact shall be reported immediately to the security manager of the cognizant organization concerned. In any such case, the individual involved shall be debriefed orally. The fact of a refusal to sign a Security Termination Statement shall be reported to the Director, Defense Investigative Service, who shall ensure that it is recorded in the Defense Clearance and Investigations Index.

c. The Security Termination Statement shall be retained by the DoD Component that authorized the individual access to classified information for the period specified in the Component's records retention schedules, but for a minimum of 2 years after the individual is given a termination briefing.

d. In addition to the provisions of subparagraphs a., b., and c. above, DoD Components shall establish a central authority to be responsible for ensuring that Security Termination Statements are executed by senior personnel (general officers, flag officers and GS-16s and above). Failure on the part of such personnel to execute a Security Termination Statement shall be reported immediately to the Deputy Under Secretary of Defense for Policy.

CHAPTER XI

PROGRAM MANAGEMENT

11-100 General

To ensure uniform implementation of the DoD personnel security program throughout the Department, program responsibility shall be centralized at the DoD Component level.

11-101 Responsibilities

* a. The Assistant Secretary of Defense for Command, Control, Communications
* and Intelligence (ASD(C3I)) shall have primary responsibility for providing guidance, oversight, development and approval for policy and procedures governing personnel security program matters within the Department: *

(1) Provide program management through issuance of policy and operating guidance.

(2) Provide staff assistance to the DoD Components and defense agencies in resolving day-to-day security policy and operating problems.

(3) Conduct inspections of the DoD Components for implementation and compliance with DoD security policy and operating procedures.

(4) Provide policy, oversight, and guidance to the component adjudication functions.

(5) Approve, coordinate and oversee all DoD personnel security research initiatives and activities.

b. The General Counsel shall ensure that the program is administered in a manner consistent with the laws; all proceedings are promptly initiated and expeditiously completed; and that the rights of individuals involved are protected, consistent with the interests of national security. The General Counsel shall also ensure that all relevant decisions of the courts and legislative initiatives of the Congress are obtained on a continuing basis and that analysis of the foregoing is accomplished and disseminated to DoD personnel security program management authorities.

c. The Heads of the Components shall ensure that:

(1) The DoD personnel security program is administered within their area of responsibility in a manner consistent with this Regulation.

(2) A single authority within the office of the head of the DoD Component is assigned responsibility for administering the program within the Component.

* (3) Information and recommendations are provided the ASD (C3I) and the
* General Counsel at their request concerning any aspect of the program. *

11-102 Reporting Requirements

a. The OASD (C3I) shall be provided personnel security program management data by the Defense Data Manpower Center (DMDC) by 31 December each year for the preceding fiscal year. To facilitate accurate preparation of this report, all adjudicative determinations must be entered into the DCII by all DoD central adjudication facilities no later than the end of the fiscal year. The information required below is essential for basic personnel security program management and in responding to requests from the Secretary of Defense and Congress. The report shall cover the preceding fiscal year, broken out by clearance category, according to military (officer or enlisted), civilian or contractor status and by the central adjudication facility that took the action, using the enclosed format:

(1) Number of Top Secret, Secret and Confidential clearances issued;

(2) Number of Top Secret, Secret and Confidential clearances denied

(3) Number of Top Secret, Secret and Confidential clearances revoked;

(4) Number of SCI access determinations issued;

(5) Number of SCI access determinations denied;

(6) Number of SCI access determinations revoked; and

(7) Total number of personnel holding a clearance for Top Secret, Secret, Confidential and Sensitive Compartmented Information as of the end of the fiscal year.

b. The Defense Investigative Service (DIS) shall provide the OASD (C3I) a quarterly report that reflects investigative cases opened and closed during the most recent quarter, by case category type, and by major requester. The information provided by DIS is essential for evaluating statistical data regarding investigative workload and the manpower required to perform personnel security investigations. Case category types include National Agency Checks (NACs); Expanded NACs; Single Scope Background Investigations; Periodic Reinvestigations (PRs); SECRET Periodic Reinvestigations (SPRs); Post Adjudicative; Special Investigative Inquiries (SIIs); and Limited Inquiries. This report shall be forwarded to OASD (C3I) within 45 days after the end of each quarter.

c. The reporting requirement for DMDC and DIS has been assigned Report Control Symbol DD-C3I(A) 1749.

11-103 Inspections

The heads of DoD Components shall assure that personnel security program matters are included in their administrative inspection programs.

be limited to that necessary to bring the individual's file up to date in accordance with the investigative requirements of an SBI. Should new information be developed during the current investigation that bears unfavorably upon the individual's activities covered by the previous investigation, the current inquiries shall be expanded as necessary to develop full details of this new information.

5. Periodic Reinvestigation (PR)

* a. Each DoD military, civilian, consultant, and contractor employee (to include non - U.S. citizens (foreign nationals and/or immigrant aliens) holding a limited access authorization)) occupying a critical sensitive position, possessing a TOP SECRET clearance, or occupying a special access program position shall be the subject of a PR initiated 5 years from the date of completion of the last investigation. The PR shall cover the period of the last 5 years. *

b. Minimum Investigative Requirements. A PR shall include the following minimum scope.

(1) NAC. A valid NAC on the SUBJECT will be conducted in all cases. Additionally, for positions requiring SCI access, checks of DCII, FBI/HQ, FBI/ID name check only, and other agencies deemed appropriate, will be conducted on the SUBJECT's current spouse or cohabitant, if not previously conducted. Additionally, NACs will be conducted on immediate family members, 18 years of age or older, who are aliens and/or immigrant aliens, if not previously accomplished.

(2) Credit. Credit bureau checks covering all places where the SUBJECT resided for 6 months or more, on a cumulative basis, during the period of investigation, in the 50 states, District of Columbia, Puerto Rico and overseas (where APO/FPO addresses are provided), will be conducted.

(3) Subject Interview. The interview should cover the entire period of time since the last investigation, not just the last 5-year period. Significant information disclosed during the interview, which has been satisfactorily covered during a previous investigation, need not be explored again unless additional relevant information warrants further coverage. An SI is not required if one of the following conditions exist:

(a) The SUBJECT is aboard a deployed ship or in some remote area that would cause the interview to be excessively delayed.

(b) The SUBJECT is in an overseas location serviced by the State Department or the FBI.

(4) Employment. Current employment will be verified. Military and federal service records will not routinely be checked. If previously checked by the requester when the PR was originally submitted. Also, employment records will be checked wherever employment interviews are conducted. Records need be checked only when they are locally available, unless unfavorable information had been detected.

(5) Employment References. Two supervisors or co-workers at the most recent place of employment or duty station of 6 months; if the current employment is less than 6 months employment reference interviews will be conducted at the next prior place of employment, which was at least a 6-month duration.

(6) Developed Character References (DCRs). Two developed character references who are knowledgeable of the SUBJECT will be interviewed. Developed character references who were previously interviewed will only be reinterviewed when other developed references are not available.

(7) Local Agency Checks (LACs). DIS will conduct local agency checks on the SUBJECT at all places of residence, employment, and education during the period of investigation, regardless of duration, including overseas locations.

(8) Neighborhood Investigation. Conduct a neighborhood investigation to verify subject's current residence in the United States. Two neighbors who can verify subject's period of residence in that area and who are sufficiently acquainted to comment on the subject's suitability for a position of trust will be interviewed. Neighborhood investigations will be expanded beyond the current residence when unfavorable information arises.

(9) Ex-spouse Interview. If the subject of investigation is divorced, the ex-spouse will be interviewed when the date of final divorce action is within the period of investigation.

(10) Select Scoping. When the facts of the case warrant, additional select scoping will be accomplished, as necessary, to fully develop or resolve an issue.



OFFICE OF THE UNDER SECRETARY OF DEFENSE

WASHINGTON D C 20301-2000

POLICY

11 JUN 1993

Honorable Don Edwards
 Chairman, Subcommittee on Civil
 and Constitutional Rights
 Committee on The Judiciary
 U.S. House of Representatives
 Washington, DC 20515-6220

Dear Mr. Chairman:

As requested in your letter of May 26, 1993, I have enclosed responses to several questions for the record pertaining to my testimony on May 5, 1993, before a joint session of the Subcommittee on The Civil Service, and the Subcommittee on Civil and Constitutional Rights.

I appreciated the opportunity to testify before the two Subcommittees, and to further assist by providing answers to these questions. A similar letter is being sent to Congressman McCloskey, Chairman of the Subcommittee on The Civil Service, Committee on Post Office and Civil Service. I am available should you require any additional information concerning this matter.

Sincerely,

Maynard C. Anderson
 Assistant Deputy Under Secretary of Defense
 (Security Policy)

Enclosure:
 As stated

cc:
 The Honorable Henry J. Hyde
 Ranking Republican Member

Written Questions
Submitted to Mr. Maynard C. Anderson
Assistant Deputy Under Secretary of Defense
For Security Policy
Office of the Under Secretary of Defense for Policy

1. What are the most frequent specific reasons for denial or revocation of access to SAPs?

RESPONSE: The most common reasons for denial or revocation of access to SAP information are substance abuse, excessive indebtedness, and mental or emotional instability.

2. You refer to DCID 1/14 being the "baseline" requirement for SAP administrative due process and appeals - can't these be waived? Are individuals notified that the procedures have been waived? Can you give the percentage of cases in which they were waived in the last two years? Does Army use different procedures than the other services?

RESPONSE: I will respond to each issue addressed in this question separately.

a) You refer to DCID 1/14 being the "baseline" requirement for SAP administrative due process and appeals - can't these be waived? Yes, the administrative due process procedures of DCID 1/14 can be waived if providing such procedures is not clearly consistent with national security. This exemption should only be invoked in a small number of programs of such extreme sensitivity that mere knowledge of their existence would endanger national security. In DoD, the exemption must be approved by the Deputy Secretary of Defense.

b) Are individuals notified that the procedures have been waived? Due to the extreme sensitivity of these programs, the individual is not generally advised of the waiver of DCID 1/14 provisions.

c) Can you give the percentage of cases in which they were waived in the last two years? Since SAP access determinations fall within the purview of the DoD Component concerned, I am unable to provide an accurate percentage. However, I believe that percentage would be low.

d) Does the Army use different procedures than the other services? In DoD, all SAPs utilize the administrative due process provisions of DoD Regulation 5200.2-R unless upgraded adjudicative criteria has been authorized by the Deputy Secretary of Defense, in which case, Annex B, DCID 1/14 is the baseline standard. The Army has determined that in the majority of its programs, the adjudicative criteria contained in DoD 5200.2-R is sufficient.

3. According to GAO, there is a discrepancy between how Army and other Components of DoD read DoD Regulation 5200.2-R to cover Special Access Programs, can you explain this discrepancy?

RESPONSE: I disagree that there is a discrepancy among DoD Components, but there is a difference in application. GAO's interpretation of DoD Regulation 5200.2-R, is that it prohibits the use of any other administrative due process standard. The DoD position is that DoD 5200.2-R facilitates the use of Annex B, DCID 1/14 as the minimum standard when upgraded adjudicative criteria is warranted. To more clearly define the policy, DoD will revise DoD 5200.2-R, and DoD Directive 0-5205.7, "Special Access Program Policy" to clearly specify that Annex B, DCID 1/14 serves as the minimum administrative due process standard.

4. Can you describe the "new" Air Force and Navy appeal procedures? Under the new procedures, is there a central adjudicative authority as under Army's?

RESPONSE: The Navy and Air Force have developed new appeal procedures which are patterned after the requirements of DCID 1/14. Both procedures entail notification of the individual, to include a summary of disqualifying issue(s), and an opportunity for the individual to appeal to a higher authority. The following is a brief synopsis of the two appeal procedures:

NAVY: After the initial notification of adverse action, the individual may appeal to a review board made up of personnel removed from the adjudication process and program in question. In the event the appeal review board affirms the ineligibility determination of the senior adjudication official, the individual is permitted an opportunity for a final appeal to a senior military or civilian official.

AIR FORCE: After the initial notification, the individual may appeal to a superior of the initial determination authority. A final appeal may be made to a three person appeal board separate from the initial determination authority.

Neither service has established a central adjudicative authority as does the Army. However, this does not mean that adjudication determinations in the Navy and the Air Force are less fair to the individual. Though made locally, individual adjudications are based on a standard criteria specifically tailored to the Special Access Program.

5. Is there DoD-wide criteria for who seems "to be potential candidates for recruitment by foreign intelligence, or whose behavior does not demonstrate the standards for trustworthiness and reliability necessary to protect the nations's most sensitive information" or is this left to the discretion of each component? Each Special Access Program?

RESPONSE: The adjudicative criteria for DoD Special Access

Programs is sometimes tailored to particular program requirements as part of the overall security procedures. Generally, however, the provisions of either DoD 5200.2-R, or DCID 1/14 are utilized. Although each component is permitted latitude in tailoring the specific adjudicative criteria to their programs, the criteria, along with all other aspects of the program, are reviewed by the Office of the Deputy Under Secretary of Defense for Security Policy, and approved by the Deputy Secretary of Defense.

6. If the criteria mentioned in Question 5 is left to each component, or each program, is there some mechanism to assure consistent standards and applications? If so, can you briefly describe that?

RESPONSE: The Deputy Secretary of Defense is responsible for approving the adjudicative criteria for each Special Access Program, thereby ensuring that such measures are applied in a consistent manner based on the threat, sensitivity and criticality of the program.



INSPECTOR GENERAL
DEPARTMENT OF DEFENSE
400 ARMY NAVY DRIVE
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Honorable Don Edwards
Chairman, Subcommittee on Civil
and Constitutional Rights
Committee on the Judiciary
House of Representatives
Washington, D.C. 20515-6220

Dear Mr. Chairman:

At your request and at the request of Chairman William L. Clay, House Committee on Post Office and Civil Service, and Chairman Frank McCloskey, Subcommittee on the Civil Service, House Committee on Post Office and Civil Service, the General Accounting Office (GAO) reviewed the due process procedures and practices for individuals whose access to special access programs and sensitive compartmented information in the Army, Navy, and Air Force is denied or revoked. The results of the review were included in the GAO final report entitled-- "DOD SPECIAL ACCESS PROGRAMS: Administrative Due Process Not Provided When Access Is Denied or Revoked" (OSD Case 9359).

The Department of Defense response to the report is enclosed for your information. Should you have any questions, please contact me or Ms. Lorraine F. Carpenter, Office of the Assistant Inspector General for Analysis and Followup, at (703) 693-0211.

Similar letters are also being sent to Chairmen McCloskey and Clay.

Sincerely,

Derek J. Vander Schaaf
Deputy Inspector General

Enclosure

cc: Honorable Henry J. Hyde ←
Ranking Republican



POLICY

OFFICE OF THE UNDER SECRETARY OF DEFENSE

WASHINGTON, D. C. 20301-2000

26 JUL 1993

Ms. Donna M. Heivilin, Director
Defense Management and NASA Issues
National Security and International
Affairs Division
U.S. General Accounting Office
Washington, DC 20548

Dear Ms. Heivilin:

This is the Department of Defense (DoD) response to the General Accounting Office (GAO) final report GAO/NSIAD-93-162, entitled "DOD SPECIAL ACCESS PROGRAMS: Administrative Due Process Not Provided When Access is Denied or Revoked," dated May 5, 1993 (GAO Code 398124), OSD Case 9359. The DoD response to the draft GAO report was included as an appendix in the final report. The DoD positions on the report issues have not changed.

Although the DoD partially concurs with the report, the Department continues to disagree on two fundamental issues:

The GAO incorrectly concludes that the same administrative due process is required in all cases where access to a Special Access Program is denied or revoked, regardless of the sensitivity of the program, the nature of the program, the possible damage to national security, or the special adjudicative/investigative procedures applicable to the individual Special Access Program.

The GAO incorrectly interprets the provisions of DoD Regulation 5200.2-R, which recognize that special clearance and adjudicative procedures may be followed in connection with access determinations involving Special Access Programs.

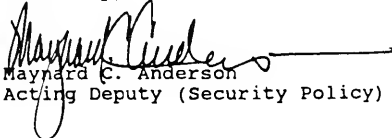
The DoD is committed to affording due process and appeal rights to the full extent practicable, limited only when necessary to protect classified information from possible disclosure during the clearance process. To accomplish that goal, the DoD utilizes the provisions of paragraph 8-201 of DoD Regulation 5200.2-R. If a program is authorized upgraded adjudicative criteria, Annex B, Director of Central Intelligence Directive 1/14, is the minimum standard applied. This procedure is consistent with DoD regulation, and satisfies legal requirements.

The DoD is continually striving to improve administrative process provisions. Such efforts are always aided by studies

such as that conducted by the GAO. While the DoD disagrees with some inaccuracies contained in the report, the report does help focus the attention of the DoD on that which may be misunderstood by those outside of the Department. Also, the GAO report helped to facilitate efforts to refine and clarify existing policy documents. By the end of 1993, the DoD intends to revise DoD Regulation 5200.2-R to state specifically and clearly the requirements for administering Special Access Programs. In addition, both the Air Force and Navy have adopted improved appeal procedures.

The detailed DoD comments on specific points on the GAO rebuttal issues are provided in Enclosure 1, while the current status of the agreed-to actions in response to the GAO recommendations are provided in Enclosure 2.

Sincerely,



Maynard C. Anderson
Acting Deputy (Security Policy)

Enclosures:
As stated

GAO FINAL REPORT GAO/NSIAD-93-162 - DATED MAY 5, 1993
(GAO CODE 398124) OSD CASE 9359

"DOD SPECIAL ACCESS PROGRAMS: ADMINISTRATIVE DUE PROCESS
NOT PROVIDED WHEN ACCESS IS DENIED OR REVOKED"

DEPARTMENT OF DEFENSE COMMENTS
ON THE GAO REBUTTAL ISSUES

* * * * *

* REBUTTAL ISSUE 1: DISAGREEMENT WHETHER ADMINISTRATIVE
DUE PROCESS IS PROVIDED IN SPECIAL
ACCESS PROGRAMS.

DOD POSITION: The Department asserted it is DoD policy that the administrative process provisions of DoD Regulation 5200.2-R will be used, unless the Special Access Program uses upgraded adjudicative criteria--as approved by the Deputy Secretary of Defense. In the upgrade cases, as a minimum, Annex B of Director of Central Intelligence Directive 1/14 would apply. The DoD pointed out that the procedures for Sensitive Compartmented Information allow for a waiver of administrative due process procedures. (pp. 10-11, pp. 24-25/GAO Final Report)

GAO REBUTTAL: The GAO disagreed with the DoD, asserting that the paragraphs referred to in the DoD guidance do not specify administrative due process may be waived under extenuating circumstances. The GAO continued to maintain that, in every Navy and Air Force case it reviewed, the individuals did not receive the due process specified. (p. 10/GAO Final Report)

ADDITIONAL DOD COMMENTS: The DoD position is unchanged. The use of DoD Regulation 5200.2-R to affect investigative and adjudicative upgrades of DoD Special Access Programs is of longstanding application. Contrary to the GAO interpretation of DoD Special Access Program policy, the ability to waive administrative due process provisions in a few highly classified programs is fundamental. Those programs are of such extreme sensitivity that mere knowledge of their existence would cause severe damage to national security. The DoD policy is consistent with Executive Order 12356 and the DoD implementing regulations--and it satisfies all relevant legal requirements.

However, in an effort to eliminate any possible ambiguity, the DoD plans to revise DoD Regulation 5200.2-R to define the policy more clearly. It is anticipated that the revision will be implemented by the end of calendar year 1993.

* REBUTTAL ISSUE 2: DISAGREEMENT CONCERNING APPOINTMENT
OF OFFICIALS FOR APPEAL PANELS

DOD POSITION: The DoD contended that the Navy and the Air Force

regulations had been developed to ensure a complete perception of independence in the appointment of officials. (pp. 27-29/GAO Final Report)

GAO REBUTTAL: The GAO disagreed, continuing to express concern because some panel members were within the same office of command that was responsible for the denial or revocation of access being appealed. (pp. 11-12/GAO Final Report)

ADDITIONAL DOD COMMENTS: It is the DoD position that the appeal procedures developed by the Navy and Air Force will provide sufficient independence. In both procedures, individuals are afforded an opportunity to appeal to a three member board that is not affiliated with the adjudicative authority or program involved. Further, it should be noted that the appointment of reviewing officials from outside the "same office of command" does not guarantee impartial or unbiased panel members for appeals review. Other factors are more important such as assurance that panel members have the ability to make mature and impartial judgements, and are free of influence from the adjudicative authorities involved.

★ **REBUTTAL ISSUE 3: DISAGREEMENT CONCERNING ESTABLISHING OVERSIGHT PROCEDURES TO ENSURE COMPLIANCE BY MILITARY SERVICES.**

DOD POSITION: The DoD contended that the procedures already exist for the Office of the Deputy Under Secretary of Defense for Security Policy to conduct oversight of the DoD Special Access Program offices, field activities, and contractor facilities. The DoD pointed out that, when Special Access Programs are initially approved, the program is reviewed by the Office of the Deputy Under Secretary of Defense for Security Policy, and ultimately approved by the Deputy Secretary of Defense. (p. 29/GAO Final Report)

GAO REBUTTAL: The GAO continued to express strong concern that, because approval of the Special Access Programs security plans was only begun in March 1992, there are many plans--authorized prior to that date--which were not approved by the Deputy Secretary. (p. 12/GAO Final Report)

ADDITIONAL DOD COMMENTS: It continues to be the DoD position that Special Access Programs are provided sufficient oversight to ensure compliance with approved program security procedures, including programs approved prior to March 1992. Within the DoD, Special Access Programs are revalidated on a yearly basis by the Deputy Secretary of Defense. Revalidation includes a review of all aspects of the program (to include security plans and procedures) to ensure that the program continues to warrant special access controls.

GAO FINAL REPORT GAO/NSIAD-93-162 - DATED MAY 5, 1993
(GAO CODE 398124) OSD CASE 9359

"DOD SPECIAL ACCESS PROGRAMS: ADMINISTRATIVE DUE PROCESS
NOT PROVIDED WHEN ACCESS IS DENIED OR REVOKED

CURRENT STATUS OF AGREED-TO ACTIONS IN
RESPONSE TO THE GAO RECOMMENDATIONS

★ ★ ★ ★ ★

- ★ RECOMMENDATION 1: The GAO recommended that the Secretary of Defense direct the Secretaries of the Navy and the Air Force to comply with the due process requirements of the DoD personnel security program regulation with respect to the DoD military and civilian personnel for whom access to a special access program clearance is denied or revoked. (p. 9/GAO Final Report)

DOD RESPONSE TO THE DRAFT REPORT: Nonconcur. Due to national security concerns, the use of Director of Central Intelligence Directive 1/14 must be permitted. This position is consistent with DoD Regulation 5200.2-R, and strikes a balance between the protection of the nation's most sensitive classified programs, and providing citizens with a fair clearance procedure. It is noted that the provisions of DoD 5200.2-R are utilized in those Special Access Programs that are not authorized upgraded adjudicative criteria. (pp. 30-31/GAO Final Report)

CURRENT DOD POSITION: The DoD position is unchanged. The DoD continues to maintain that national security concerns require the use of Director of Central Intelligence Directive 1/14 provisions in a few highly sensitive programs.

- ★ RECOMMENDATION 2: The GAO recommended that the Secretary of Defense require that the Services designate officials for appeal purposes from commands that are independent from those officials who make unfavorable special access programs and sensitive compartmented information access determinations. (p. 9/GAO Draft Report)

DOD RESPONSE TO THE DRAFT REPORT: Partially concur. Although the DoD agrees with the report premise that appeals should be reviewed by individuals independent from those officials who made the initial unfavorable Special Access Program and Sensitive Compartmented Information access determination, such procedures, already exist. New Navy and Air Force appeal procedures have been developed to help clarify that issue. (p. 31/GAO Final Report)

CURRENT STATUS OF AGREED-TO ACTIONS: The new Navy and Air Force procedures provide an adequate independent appeal authority. In both procedures, individuals are provided an opportunity to appeal to a three member appeal board consisting of senior level



personnel who are not affiliated with the original adjudicative authority, or the program concerned. The Navy procedure was implemented for acknowledged programs on May 1, 1993, and June 1, 1993 for unacknowledged programs. The Air Force procedure was implemented in October 1992.

- ★ RECOMMENDATION 3: The GAO recommended that the Secretary of Defense establish oversight procedures to ensure compliance by the Military Services and other Defense components with the Special Access Programs/Sensitive Compartmented Information due process requirements for the DoD and contractor personnel. (p. 9/GAO Final Report)

DOD RESPONSE TO THE DRAFT REPORT: Partially concur. Although the DoD agrees with the GAO objective, the recommended procedures already exist. When Special Access Programs are initially approved, the program's security plan is reviewed by the Office of the Deputy Secretary of Defense for Security Policy, and ultimately approved by the Deputy Secretary of Defense. At that time, the adjudicative criteria, and administrative process provisions for the program are also approved. The Office of the Deputy Under Secretary of Defense for Security Policy also conducts oversight visits of DoD Special Access Program central offices, field installations, and contractor facilities. During those visits, all elements of the Special Access Program security plan are reviewed, to include the issue of administrative process, and appeal. (p. 31/GAO Final Report)

CURRENT STATUS OF AGREED-TO ACTIONS: The DoD position is unchanged. Current DoD procedures for approval and revalidation, along with visits to program sites, provide Special Access Programs with sufficient oversight and control.

- ★ RECOMMENDATION 4: The GAO recommended that the Secretary of Defense propose that the National Industrial Security Program establish Special Access Program due process procedures for contractor employees that are similar to the DoD procedures for military and civilian personnel. (p. 9/GAO Final Report)

DOD RESPONSE TO THE DRAFT REPORT: Partially concur. The DoD is working within the established structure of the National Industrial Security Program to define clearly what will be the minimum administrative process provisions for the program. Currently, it is foreseen that such provisions are to be addressed in the National Industrial Security Program Supplement, which is to cover Sensitive Compartmented Information, and Special Access Programs of all Executive Branch structures, and will be in accordance with Director of Central Intelligence Directive 1/14. It is expected that the National Industrial Security Program Supplement will be completed in January 1994. (p. 32/GAO Final Report)

CURRENT STATUS OF AGREED-TO ACTIONS: The DoD position is unchanged. The DoD continues to work within the National Industrial Security Program structure to develop uniform procedures for the protection of classified information in industry. As previously stated, administrative process provisions for the National Industrial Security Program will be detailed in the National Industrial Security Program Supplement, and will be in accordance with Director of Central Intelligence Directive 1/14. The National Industrial Security Program Supplement is still scheduled for completion in January 1994.



ISBN 0-16-046194-4

